



Santander UK plc

CMA Retail Banking Market Investigation

Response to the Provisional Decision on Remedies

9 June 2016

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1 Executive Summary

- 1.1 This is the response by Santander UK plc (**San UK**) to the CMA's Provisional Decision on Remedies dated 17 May 2016 (the **PDR**). We welcome the CMA's work to strengthen competition in the retail banking market and ensure it works better for consumers. We recognise that there is no "magic bullet"¹ to transform this market in the interests of customers, and consider that the PDR represents a considered and thoughtful response to a complex market.
- 1.2 However, we consider that the proposed remedies package fails to tackle the incumbency advantages enjoyed by the Big Four banks. At the outset of this market investigation, we explained to the CMA our position as a scale challenger: a bank that is small enough to have the appetite to innovate and win customers and with sufficient scale to genuinely challenge the incumbent Big Four banks. In the SME market in particular, our growth has required substantial investment, and has been slower than it would have been in a well-functioning market. By contrast, the Big Four banks benefit from the root causes of the Adverse Effects on Competition identified by the CMA in its Provisional Findings.
- 1.3 We have previously explained to the CMA the disproportionate impact of regulatory burdens on challenger banks, and this concern has been expressed by other banks in the course of this investigation. We are disappointed that the CMA has not tackled the material impediment to competition in retail banking caused by the cumulative effect of regulation - including capital requirements, the bank surcharge and the implementation of the ring fencing rules - on challenger banks, including San UK as a scale challenger. While we understand that the CMA cannot on its own amend tax policy or capital requirement rules, it must be cognisant of the advantages enjoyed by the Big Four when designing its remedies package.
- 1.4 Indeed, to the extent that the remedies package imposes material obligations on scale challengers it risks damaging the ability of such banks, including San UK, to compete in the market. Challengers are less well able to bear the cumulative regulatory burden. We therefore have serious concerns as regards a number of the proposed remedies and the unintended consequences they may lead to. In particular we have concerns regarding the Nesta proposal, and the burden created by requiring continual review of the sector by disparate regulatory authorities.

¹ PDR, at paragraph 15.

- 1.5 We submitted in our Response to the Provisional Findings that the CMA should implement a remedies package based on three key considerations:
- (a) the remedies package should be guided by the perspective of the customer undertaking a switching journey;
 - (b) specific additional actions should be taken to address the SME market; and
 - (c) remedies that would have little impact should be avoided as unnecessary distractions from the fundamental remedies required.²
- 1.6 When the PDR is assessed against these three objectives, our position is as follows:
- (a) **Customer switching journey:** We consider that the first of these considerations has been largely met by the remedies package proposed in the PDR. The CMA's "Foundational" and "Switching Remedies" focus on the switching journey, from the point of engagement to the usability of the CASS switching process. The CMA's overdraft remedies are correctly focused on "*increasing customers' awareness of their overdraft usage and help[ing] them take more control of it*",³ i.e. engaging them and making further improvements necessary to allow them to access, assess and act on information relevant to them.
 - (b) **SME market:** While the CMA is also proposing a suite of remedies focused on the SME market, elements of their design cause us serious concern. In Section 2, we set out our objections to the concept, design and funding of the Nesta proposal. These concerns were explained to a large extent in our response to the Working Paper on the role of comparison sites for small and medium-sized enterprises in addressing the adverse effect on competition dated 29 March 2016 (**Response to the SME PCW Working Paper**). We remain deeply concerned that the CMA is seeking extensive financial and technical resource from challenger banks to fund a remedy that is uncertain to produce a sustainable outcome, and certainly unable to produce a timely solution.
 - (c) **Low impact remedies:** We welcome the fact the CMA has recognised that the costs associated with some remedies are disproportionate to the benefits they may bring, in particular in relation to Account Number Portability, the extension of CASS to cover continuous payment authorities (**CPAs**), and a requirement that banks offer partial switching. However, we are concerned that the overall impact of the proposed remedies package may have a disproportionate impact on challenger banks, including San UK, arising from:
 - (a) the CMA's proposed approach in some of its remedies to include within Orders all banks with a market share of 5% or greater; and
 - (b) the extent to which the CMA is seeking support from other authorities, including the FCA, BIS, HMT, and the PSR. We consider the CMA is right not to treat the end of

² Response to the Provisional Findings and Notice of Possible Remedies, at paragraph 4.

³ PDR, at paragraph 56.

the market investigation as “conclusive”, as technical developments take time to have an effect on the market. However, we would encourage the CMA to carefully delimit those areas that it expects other bodies to review, to save the industry as a whole, and challenger banks in particular, from fragmented regulatory intervention. The multiplicity of further reviews, conducted by disparate regulators, covering areas already dealt with in detail by the CMA as part of the market investigation, is not conducive to efficient and effective regulatory oversight.

- 1.7 The CMA should consider what materially better further information or understanding potential on-going reviews are expected to yield, given the substantial amount of work it has already undertaken in this market investigation. We urge the CMA to be more decisive in dismissing further reviews of those remedies which it has already found to be of little benefit and disproportionate cost, in particular in relation to partial switching and overdraft opt-outs.
- 1.8 In this response, we provide more detailed comment on:
- (a) the specific problems with the Nesta proposal (*section 2*);
 - (b) the disproportionate impact of making orders against challenger banks (*section 3*); and
 - (c) the risks of over-intervention; (*section 4*).
- 1.9 In Annex 1, we then set out our views on each individual remedy proposed by the CMA. We also provide some additional insight into how the CMA can best design and implement its remedies, and the costs associated with them. In relation to a number of remedies, we consider the timelines envisaged would impose considerable pressure on challengers.
- 1.10 We have a particular concern in relation to omitting arranged overdraft fees from the scope of the Maximum Monthly Charges for overdraft usage. It is critical that the CMA mandate that providers inform customers of the maximum total fees - including paid and unpaid items - they can incur in a statement month for arranged and unarranged overdraft usage (rather than just unarranged overdraft usage). This will allow customers to properly assess the actual cost of overdraft usage as between different providers, and prevent banks from simply reweighting charges towards arranged overdrafts with no benefit to the consumer.

2 Our serious concerns with the Nesta Proposal

- 2.1 We do not consider the CMA should pursue the remedy proposal described in paragraphs 6.119 to 6.2199 of the PDR, according to which eight banks, including San UK, would be required to fund a challenge prize run by Nesta in order to “*bring about the creation of one or more comparison sites which make it easier for SMEs to undertake comparisons of price and service quality*” (the **Nesta Proposal**).
- 2.2 We set out in some detail our concerns with the Nesta Proposal in our Response to the SME PCW Working Paper. The PDR does not address these concerns in any detail.
- 2.3 We explain below that the Nesta Proposal:

- (a) does not accord with the CMA's guidance on remedies (*paragraphs 2.4 to 2.6*);
- (b) due to funding requirements, would be detrimental to challenger banks included within its scope (*paragraphs 2.7 to 2.11*); and so
- (c) should be abandoned or modified (*paragraphs 2.12 to 2.15*).

The Nesta Proposal does not accord with the CMA's guidance on remedies

- 2.4 The CMA has a duty to remedy the adverse effects on competition that it has identified through remedies which are effective but also proportionate. Remedies should not be more onerous than are required and the least onerous if there is a choice. Remedies should be capable of being effectively implemented and enforced; take account of the time period for implementation; and work well together as a package.
- 2.5 The CMA has recognised that the Nesta Proposal is an unusual remedy suggesting that: “*This is an innovative approach to implementing a CMA remedy*”. In fact, we consider that not only does the Nesta Proposal fail to satisfy the requirements of being an effective, reasonable and proportionate remedy, it may fall outside the scope of the remedies the CMA can implement for the following reasons.
- (a) **It is uncertain to produce an effective outcome and therefore carries a material risk of being ineffective:** The PDR expressly recognises the possibility that the Nesta Proposal may not result in any solution, or a solution that is viable in the long term.⁴
 - (b) **It is not a timely solution:** The CMA recognises that the Nesta Proposal will not bear fruit until mid-2019 at the earliest.⁵ However, the CMA focuses its concern in this regard on interim measures, rather than on the more fundamental problem that the Nesta Proposal will not be a “remedy” to any AEC in the short term.⁶
 - (c) **It is disproportionately expensive; and the imposition of a fall-back provision means there is the likelihood of a “double remedy”:** The PDR changes the name of the “fallback remedy” to the “safeguard remedy”. This does not alter the position that such a remedy would be triggered in the result of a failure of the Nesta Proposal to bring about an adequate solution. However, in its section of “cost of remedies”, the CMA considers the “total cost of the Nesta project”, but not the potential cost of the “Nesta project and the safeguard remedy”. To properly assess the proportionality of this remedy, all possible costs should be considered. If the safeguard remedy was triggered, in effect the remedy would cost an additional £10 million. Moreover, it is impossible for the CMA to accurately identify what the safeguard remedy would look like, as it would only be designed in event of a failure of the Nesta Proposal, at which point, the market may be substantially different.

⁴ PDR, at paragraph 6.187.

⁵ PDR, at paragraph 9.57.

⁶ PDR, at paragraph 6.176.

- (d) **There are existing commercial comparison tools that the CMA did not consider in its Working Paper and which have shown real promise:** The PDR recognises that, while there are “several comparison websites currently available”, the Nesta Proposal will give rise to a “one stop shop which would enable [SMEs] to quickly and reliably compare banks on price, quality of service and lending criteria across the whole range of products”.⁷ This appears to pre-judge the outcome of the process, and the concept of a “one stop shop” sits at odds with the possibility of creating multiple winning solutions. Further, the CMA mischaracterises Business Banking Insight (**BBi**) as a price comparison tool and does not, in its section on “Existing SME comparison tools”, give adequate consideration to the status, effectiveness or potential of the tools that currently exist.

These tools could be supported by banks to increase their impact. PCWs could be helped to become more effective if banks provided them with data, including customer transaction data. There would be no need to add prize money as an additional incentive. Since this is a cheaper and just as effective option as Nesta, this would be a more proportionate measure. This approach would also better ensure that smaller banks (those not currently within the scope of the proposed Nesta Order) could be equal players in the development of PCWs, and would help tackle the root causes of the underdevelopment of PCWs in the SME banking market including barriers to entry and expansion.

- 2.6 The concerns above have been mirrored by Government, with HMT noting: “*that the Nesta challenge prize did not have a certain timescale and outcome*. HMT further noted that the remedy risks “*a negative impact on the overall SME framework even if the solution itself was positive if it led to the loss, or weakening, of existing tools*”.⁸

Funding the Nesta Proposal will have a detrimental impact on challenger banks included within its scope

- 2.7 Since the acquisition of Alliance & Leicester six years ago, San UK has invested to establish a full service banking infrastructure in order to compete with the incumbent Big Four banks in the provision of BCAs and SME lending. [X] To really challenge the dominance of the Big Four banks - in a market which BIS recently called a “4-firm oligopoly”⁹ - we must continue to innovate and develop the business we have built to date. For example, [X].
- 2.8 [X]. The significant investment includes allocation of limited resource and funding in those areas and to those projects where we feel confident our investment is likely to generate returns. A requirement not only to be involved in, but also to fund, a challenge prize with an uncertain outcome is a significant diversion of our limited resources [X].

⁷ PDR, at paragraph 6.174(b).

⁸ This is noted in the PDR, at paragraph 6.153. We have not seen HMT’s submission on this point.

⁹ See the report “small and medium enterprises lending and competition: market comparison” published on 12 May 2016 <https://www.gov.uk/government/publications/small-and-medium-enterprises-lending-and-competition-market-comparison>. This is consistent with the CMA’s Provisional Findings at paragraphs 6.38 and 6.121, which found that the incumbent big four banks had a combined market share of 83% of active and total BCAs as at 2014, and that these market shares have remained stable over time.

2.9 To put this in context, the PDR suggests that the Nesta Proposal should be funded by all banks in the UK and Northern Ireland with market shares in the BCA or SME lending markets of more than 5%. San UK has a market share of less than 5% in SME lending¹⁰, [§<].

2.10 [§<].¹¹

2.11 [§<]. A number of other UK banks have shied away from the SME market “[b]ased on the anticipated levels of switching and growth” and the associated “modest returns”.¹² It is only because we have a patient shareholder that we have been able to make the investments we have made to date. We anticipate that this will materially detract from our ability to compete more effectively with the incumbent Big Four banks.

The Nesta Proposal should be abandoned or modified

2.12 For the reasons set out above, we consider that the Nesta Proposal should be abandoned. However, should the CMA continue with this proposal, it should not seek funding from banks with only a small share of the SME banking market. Instead, it would be appropriate to have a three tier approach, whereby:

- (a) The Big Four banks, as the incumbents who benefit from the current market structure, would fund the Nesta prize fund and contribute to data requirements and working groups;
- (b) Challengers and scale challengers would support with input, data and engagement, but not funding; and
- (c) New entrants and smaller challengers would have the option to participate with standards set that enable future participation in any solutions on an equal basis.

2.13 It is critical that, if the Nesta Proposal is adopted, challengers are able to contribute. It would be of little use if the Nesta Proposal resulted in a solution based on and tailored to the products and practices of only the largest banks.

2.14 It is worth noting that seeking funding only from the Big Four banks need not require each of those banks to provide more funding than the PDR anticipates. [§<]. Indeed, existing price comparison websites consider the key prize access to customer data. Please see further our comments in Section 3.

2.15 Should the Nesta Proposal be pursued in any form, the CMA should have regard to the design considerations we previously set out in Annex 1 to our Response to the SME PCW Working Paper. A number of these have not been addressed at all in the PDR.

¹⁰ Provisional Findings, Appendix 6, Table 6.7. The PDR at paragraph 171 suggests that the criteria for inclusion in the Nesta Proposal should be 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] However, paragraph 172 suggests that “On this basis”, San UK would be included, despite our share in UK SME lending of less than 5% (indicating that a share of 5% in either BCAs or in SME lending suffices). We consider that the position as set out in paragraph 171 is a more appropriate test, for the reasons set out in Section 3, in particular, Section 3.5. It would be helpful if the CMA could clarify the applicable test.

¹¹ [§<]

¹² Nationwide small and medium sized enterprise case study.

3 The disproportionate impact of making orders against challenger banks

- 3.1 As expressly recognised in the PDR, the remedies package should be comprehensive, effective, and proportionate. As regards proportionality, this means that the remedies package should be: (a) effective in achieving its legitimate aim; (b) no more onerous than needed to achieve its aim; (c) the least onerous if there is a choice between several effective measures; and (d) does not produce disadvantages which are disproportionate to the aim.
- 3.2 We have previously explained to the CMA the disproportionate impact of regulatory burdens on challenger banks,¹³ and this concern has been expressed by other banks in the course of this investigation.¹⁴ We are disappointed that the CMA has not tackled the material impediment to competition in retail banking caused by the cumulative effect of regulation - including capital requirements, the bank surcharge and the implementation of the ring fencing rules - on challenger banks, including San UK as a scale challenger. Imposing further regulatory costs on challenger banks less well able to deal with them is likely to produce countervailing disadvantages; namely, reducing the ability of those challengers to invest in their own propositions to compete effectively with the Big Four banks.
- 3.3 In addition, while the CMA has come to the view that "*it is not the size of the banks or the number of banks that is the problem*",¹⁵ a number of the CMA's findings and positions reflect the fact that the market currently favours the largest banks. We set these out in our Response to the Provisional Findings,¹⁶ and in summary:
- (a) Financial performance suggests that the incumbent banks obtain greater revenue per customer. We understand why the CMA was unable to perform a comprehensive market-wide profitability analysis given the difficulties in comparing profitability in the relevant markets. Nonetheless, the CMA has found the incumbent Big Four banks have a higher market share when shares are considered by revenue, rather than by volume.¹⁷ The CMA has found that these four banks benefit from a greater net revenue per account and that challenger banks, including scale challengers such as San UK, have lower net revenue per account because they are seeking to grow their shares by offering better terms to attract new customers. The updated pricing analysis shows that there is a positive relationship between: (i) length of time account held with a bank and price; and (ii) between bank market share and price. Finally, according to its calculations, there are still a large number of

¹³ See, for example, our Response to the SME PCW Working Paper at section 7, and our hearing on Wednesday, 9 December 2015.

¹⁴ For example, Clydesdale stated: "CB would urge the CMA to give due regard to the fact that a number of the remedies [...] are more easily absorbed and implemented by the larger financial institutions without adversely impacting on their competitiveness." Response to Notice of Possible Remedies, dated 4 December 2015, at paragraph 7.1). Tesco, in its hearing, noted that "there are quite a number of proposals of iterative changes which will have quite a cost associated with them, they will be felt disproportionately by smaller players because they obviously have a smaller base to soak that cost up from." (Notes of a hearing of a Banking Roundtable held at Competition and Markets Authority, on Tuesday, 24 November 2015, page 100 lines 1-3).

¹⁵ PDR, at paragraph 8.

¹⁶ Response to the Provisional Findings, at Annex 1.

¹⁷ Indeed, the CMA considers that it likely understates the incumbent Big Four banks' market share by revenue.

customers which would have saved materially had they switched bank accounts, with the biggest gains available to customers at the Big Four banks.¹⁸

- (b) Customers at larger banks experience worse outcomes. The CMA found that “[b]anking groups with a higher market share tended to have higher average prices and lower overall quality”,¹⁹ a position maintained in the updated pricing analysis. Across three satisfaction surveys “there is little variation in the performance of the four largest banking groups in GB, which are rated average or below average under each of the indicators”.²⁰
 - (c) Larger banks benefit from incumbency advantages, for example, in relation to SME information and product linkages, access to payment systems and capital holding requirements. Recent tax changes have reduced any tax advantages which smaller banks had which helped off-set barriers to entry and expansion.²¹ The Big Four banks benefit from favourable capital holding rules.²²
 - (d) Low engagement, the key issue at the heart of this investigation, favours larger banks with “inert” back book customers. By contrast, challenger banks have customers who are more likely to have switched recently and therefore to be relatively more engaged.
- 3.4 From the above it is clear that, as well as being better able to bear the costs of regulatory intervention, the largest banks are also the banks that most benefit from the status quo. Indeed, in each of the PCA and SME banking markets, the big four banks have combined market shares of around 80%.²³
- 3.5 Notwithstanding the above, across the PDR the CMA has used 90% market coverage and individual market shares of 5% in assessing which banks should be subject to Orders.²⁴ We consider that this leads to Orders including more banks than is necessary or appropriate:
- (a) To the extent that the CMA’s aim in relation to these orders is to cover a substantial portion of the market such that the remedies are effective, 90% is a high and arbitrary threshold.²⁵ While the CMA has appropriately concluded that the AECs could be addressed by applying remedies to a limited set of banks, the appropriate method of identifying this limited set of banks would be to identify the minimum number of banks necessary to include in order for the remedies to be effective. Instead, the CMA has simply observed that the six largest banks have 90% coverage, and proceeded to consider if this is sufficient for the remedies

¹⁸ We note that there are some shortcomings in the Updated Pricing Analysis, namely that it is inappropriate to use May 2016 prices alongside 2014 behaviour, that it is inappropriate to use 2014 figures to weight 2016 brand and group level prices, and that there are inaccuracies introduced when using average credit and overdraft balances for each current account customer rather than disaggregated transactions data. However, and in light of the analysis by the CMA to test the scale of the inaccuracies from using aggregated transactions data, we consider that it is a useful insight into outcomes generally. [3<].

¹⁹ Provisional Findings, at paragraph 11.40

²⁰ Provisional Findings, at paragraph 6.93

²¹ Corporation tax surcharge and bank levy working paper, at paragraph 85.

²² See the CMA’s (limited) conclusions in its Addendum to provisional findings The capital requirements regulatory regime, and our submissions in response to CMA Working Paper on Barriers to Entry and Expansion (response dated 29 July 2015), and our hearing with the CMA on 9 December 2015.

²³ Provisional Findings, Appendix 5 and 6. See also BIS report at footnote 12.

²⁴ In respect of API standards; loan price and eligibility indicator tool and the Nesta Proposal.

²⁵ This is the test as used in relation to Open APIs, see PDR, at paragraph 3.64.

to effectively address the AECs. Combined with the “drag along” effect described in paragraph 3.7 below, we consider such remedies would still be effective where the Order covered banks with a market share of less than 90%; and

- (b) In looking to use 5% thresholds for inclusion, the CMA is apparently looking at the “leading” providers.²⁶ We do not consider a market share of 5% equates to a “leading” position. As the discussion in paragraph 3.3 highlights, the Big Four banks are the clear “leading” banks who benefit from the current structure of the market. Moreover, in assessing “leading” positions, the CMA should look to use meaningful market shares, focusing on active accounts in PCAs and, in the SME market, on shares across products, to better reflect market power. For example, while we have a share above 5% in BCAs, we have much smaller shares in other SME banking products including lending.

3.6 We urge the CMA to consider the utility and unintended consequences of including challenger banks within those remedies where participation is only applicable via an Order to banks meeting this arbitrary threshold.

3.7 The CMA should also be aware of inevitable “drag along” effects of its orders. Where the CMA orders some banks to participate in a given remedy, it is likely that other banks will have to follow. The CMA recognises this in relation to Open APIs.²⁷ To the extent that Open APIs only allow for the seamless flow of data from larger banks, smaller banks would be disadvantaged in the market. Smaller banks will have to make sure their systems are compatible with technological developments or risk losing customers to (larger) banks that have more sophisticated technology. Given the development costs, this may be a difficult choice for a smaller challenger. The CMA should be mindful that its remedies do not inadvertently create a two-tier banking market, and in so doing, reinforce incumbency advantages.

4 The risks of over-intervention

4.1 The disproportionate effect felt by challenger banks applies in particular to the PDR’s remedies which comprise or involve further reviews to be undertaken by various bodies. These include:

- (a) the further FCA review of customer prompts contemplated by Remedy 3;
- (b) further work from the FCA to enhance the effectiveness of the MMC, contemplated by Remedy 10;
- (c) the further FCA review of customer engagement contemplated by Remedy 11;
- (d) the further FCA review of account opening and online eligibility tools for overdraft users contemplated by Remedy 12;
- (e) the further Bacs review of “firm” overdraft offers contemplated by Remedy 12;

²⁶ See, e.g., PDR, at paragraph 6.100.

²⁷ PDR, at paragraph 3.67

- (f) the HMT review of soft searching contemplated by Remedy 14;
 - (g) the BIS work exploring the role of professional advisers in SME banking contemplated by Remedy 14; and
 - (h) the HMT review of the efficacy and impact of the measures implemented under the SBEE Act and other initiatives intended to facilitate the sharing of SME information contemplated by Remedy 15.
- 4.2 This is in addition to monitoring obligations to be held by the CMA, independent third parties, the PSR, Bacs and the FCA.
- 4.3 We agree that keeping the retail banking market under review is appropriate. We agree with the CMA that there is no “magic bullet”²⁸ that will ensure the markets for PCA and SME banking products work well. Instead, as we have advocated, change will be necessarily incremental, and will depend on fundamental technological changes to the market. However, we caution the CMA against delegating further reviews in a way that leads to constant but fragmented review. The multiplicity of further reviews, conducted by disparate regulators, covering areas already dealt with in detail by the CMA as part of the market investigation, is not conducive to efficient and effective regulatory oversight.
- 4.4 As it is, the sector has been under almost continual review. As the CMA noted in its final decision to make a market investigation reference, “*the UK retail banking sector has been the subject of detailed scrutiny by the UK competition authorities and by other bodies in recent years*”.²⁹ The CMA notes in the PDR that there has been a “*succession of investigations over the years, resulting in a succession of interventions*”.³⁰ The market investigation reference was made sooner than had been anticipated by previous sector inquiries, which envisaged a market investigation reference in 2015.
- 4.5 In considering how many reviews to recommend, the CMA should be aware of the changes that its proposals may bring about. The importance of Open APIs to the CMA’s remedy package is clear, and will bring about changes to the market. The CMA should be careful not to schedule further reviews where technological development may change the nature of aspects of the market. By contrast, where an issue is clear and demands a solution, it should be resolved swiftly.
- 4.6 Further, the CMA should consider what materially better further information or understanding the on-going reviews are expected to yield, given that the CMA has already undertaken a substantial amount of work in this market investigation. In particular, we do not understand the rationale for further reviews of those remedies which the CMA has already found to be of little benefit and disproportionate cost. We urge the CMA to be more decisive in dismissing initiatives which are not merited. This comment applies to each area in which the CMA has chosen not to take

²⁸ PDR at paragraph 15.

²⁹ Personal current accounts and banking services to small and medium sized enterprises Decision on market investigation reference, at paragraph 1.3.

³⁰ PDR, at paragraph 16.

remedial action but has provisionally decided to recommend further review, and in particular to partial switching and overdraft opt outs:

- (a) **Partial switching.** In the PDR, the CMA states that is not clear that requiring banks to offers a partial switch service would be an effective remedy.³¹ However, it also states that *“Although we do not propose to introduce a specific remedy on partial switching, Bacs is considering ways of developing and promoting this service, and we encourage them to pursue this.”*³² Later in the PDR, the CMA encourages Bacs to undertake “a detailed investigation” into partial switching.³³ Given the CMA’s own findings that a partial switching remedy would not be effective (and it would therefore be disproportionate to implement), it is not clear why a further “consideration” or a “detailed” review should be “encouraged”.
- (b) **Overdraft opt outs.** This was a remedy considered in the Supplemental Remedies Notice, which would have involved a structure whereby customers could “opt out” of unarranged overdrafts. We explained that customers are already able to choose products without an unarranged overdraft.³⁴ Whilst the PDR accepts a number of shortcomings in relation to the overdraft opt-out remedy as proposed in the Supplemental Remedies Notice,³⁵ and our own and other responses to the Supplemental Remedies Notice were clear in pointing out these shortcomings, the CMA has instead proposed a further review by the FCA rather than abandon the proposal. It is not clear on what basis the CMA considers that there is merit in conducting that further review.³⁶

5 Conclusion

- 5.1 We expect that the CMA, in developing these proposals, will remain cognisant of the impending ring-fencing of retail banks, to avoid wherever possible imposing remedies that may necessitate actions from entities on both sides of a ring fence.
- 5.2 We set out below in Annex 1 more detailed comments on each proposed remedy. We will of course continue to provide our views and comments as remedies are developed.

³¹ PDR, at paragraph 4.6, and 4.230 to 4.248.

³² PDR, at paragraph 48.

³³ PDR, at paragraph 4.249.

³⁴ Our Response to the Supplemental Remedies Notice, at Section 3.

³⁵ PDR, at appendix 2.

³⁶ These comments also apply to Account Number Portability (discussed a Remedy 5 below) and capped overdraft fees (see Remedy 10 below).

Annex 1

Comments on Individual Remedies

Foundation

1 Remedy 1: Measures to develop and require the adoption of open API standards and data sharing

- 1.1 We support the CMA's adoption of Open APIs as a foundational remedy, subject to the necessary safeguards being put in place.
- 1.2 As we described in our response to the SME PCW Working Paper, it is critical that the CMA considers how any data protection issues are to be guarded against and dealt with.³⁷ Customers need confidence that their data will be secure if they are to permit their data to be shared. Recent research has shown that a customer who receives spam communications or suffers financial loss due to their data being mishandled or accessed by a third party will blame their bank. Moreover, the research also showed that only 4 in 10 consumers responded positively to the concept of data sharing via open API (with the remainder equally split between negative reactions and "unsure"), and suggested that while a smart current account comparison tool could potentially save time and effort, it may only be used infrequently and many could not envisage when or why they would want to use it.³⁸
- 1.3 In line with this concern, while we very much support the CMA driving the development and adoption of Open APIs, we consider the timeline is ambitious. Although the CMA explains that it is adopting the OBWG timeline, in fact between January and May 2016 the relevant developmental activity was on hold, pending further HMT guidance and agreement on OBWG next steps, and awaiting the publication of the PDR.
- 1.4 The PDR appears to incorrectly base its timeline on the assumption that API build activity is already underway for a Q1 2017 delivery on product, pricing, terms and condition and branch/ business centre location information. Whilst this is the most straightforward element, we consider that a minimum of 12 months from the Order is a more realistic delivery timeframe and is more reflective of the technical governance and education requirements, consistent with the OBWG objectives.
- 1.5 Not only will this help ensure data security is properly dealt with,³⁹ but will allow the governance structure to be built solidly. Further, a less aggressive timescale will allow Open APIs to flourish across the entire banking industry; for example, the FCA's credit card market study also

³⁷ Response to the SME PCW Working Paper, at Section 8.

³⁸ Research by Ipsos Mori, presented at a research session on Open Application Programming Interfaces (APIs) on 6 November 2015.

³⁹ before any customer transactional data becomes available to third parties there must be considerable customer awareness and education focusing not only on individual SMEs but along with the business groups and intermediary community. The technical aspects on security have been agreed as part of the inputs in to the OBWG work from T&O, Payments and the Chief Data Office. Based on our previous narrative, SCCB won't be providing product and pricing info due to our bespoke relationship model. We should be looking to provide generic information such as Corporate Business Centre locations though via an API.

anticipates the development of open APIs.⁴⁰ There should therefore be a consistent solution across relevant banking markets.

2 Remedy 2: Measures to enable PCA customers and SMEs to make comparisons between providers on the basis of their service quality

- 2.1 We support the principle that banks should be capable of comparison on the basis of service quality. However, as previously submitted, the CMA should be wary of mandating the provision of an exhaustive matrix of service quality indicators which would risk confusing, rather than empowering, customers. We refer the CMA to our responses to the data requests on service quality submitted on 25 February 2016 (for PCAs) and 1 April (for SMEs). We would also encourage the CMA build on existing surveys, rather than re-inventing the wheel by mandating new surveys.
- 2.2 In terms of the methodology for Core Service Indicators, we are happy to trial the CMA's proposals to determine whether they are effective. We would note, however, that the implementation timeline appears unrealistic. It took longer than six months for BBI to be set up and able to run a robust process. If the CMA does not use existing survey providers, the supplier selection process, funding mechanism, methodology and fieldwork will take some months to complete.
- 2.3 We are less certain as to how the CMA envisages the collection, use and display of "Additional Service Quality Indicators". We understand that the CMA is seeking all banks to publish, and make available through APIs, additional measures such as:
- (a) interruptions to, and unavailability of, services including digital;
 - (b) performance of telephone service/call centre;
 - (c) availability of (services in) branches;
 - (d) complaints handling;
 - (e) provision of overdraft management services;
 - (f) simplicity and speed of business account opening procedure; and
 - (g) nature and provision of account/relationship management.

The detail provided by the CMA suggests the provision of 21 "example" measures, including measures such as "ratio of staff to customer footfall". As the PDR records, we have responded to the proposal to include a multitude of different service quality measures by stating that it "*would unnecessarily complicate the issue of service.*"⁴¹ If PCWs decide that further information would be helpful to their users, they could add further information at their own option.

⁴⁰ <https://ccms.the-fca.org.uk/potential-remedies>

⁴¹ PDR, at paragraph 3.135.

- 2.4 This position appears to have been recognised by the CMA, in that the PDR notes that the Additional Service Quality Indicators are unlikely to be accessed by “*many personal customers or smaller SMEs*” directly,⁴² and that “*overloading customers with information is a particular risk in a market characterised by low engagement*”.⁴³
- 2.5 In conducting its assessment on what additional information would be useful, we suggest that the FCA be wary of unintended consequences, which may result in negative outcomes for consumers. For example, banks may endeavour to “*answer calls quickly*”,⁴⁴ to improve their score on that indicator, and then put the customer on hold. Similar concerns can be applied across the Additional Service Quality Indicators, and follow much the same form as our response to the detailed matrix of possible service quality measures on 1 April 2016.⁴⁵
- 2.6 It is important that the FCA consider the utility of each Additional Service Quality Indicator as the burden on providers will be material. These include:
- (a) the costs arising from a further round of review led by the FCA.⁴⁶ As we have explained in Section 4 above, such a review – which we note the CMA envisages taking two-years – which impose disproportionate burden on challenger banks.⁴⁷ Given the CMA’s market investigation is governed by a statutory 18-month timeline, we do not consider that it would be appropriate or proportionate to impose such an additional two year review when any resultant gains are far from clear.
 - (b) the costs of providing an assortment of information which the CMA appears to recognise has limited utility for most customers. In relation to some of the measures suggested, it is clear that compiling and maintaining the relevant information will be both very burdensome for the bank and of little or no value for customers. For example, the ratio of staff to customer footfall will vary with (i) branch, across a branch network; (ii) staff numbers, which change relatively often; and (iii) footfall, which has consistently declined in recent years. This information will therefore change on a monthly or weekly basis. In terms of assessing branch service, customers could instead access an NPS score for branch services; and
 - (c) the commitment required from both the banks and the FCA pursuant to the contemplated scrutiny by the FCA of the measures provided.⁴⁸ Moreover, to the extent these measures are collated by the banks themselves, there will be serious comparability issues which should not be underestimated.⁴⁹

⁴² PDR, at paragraph 3.157.

⁴³ PDR, at paragraph 3.113.

⁴⁴ See PDR, at paragraph 3.156(a)(ii)

⁴⁵ It may be that these anomalies and perverse incentives are smoothed by the Core Service Quality Indicators: a bank that answers calls speedily may nonetheless receive a low overall recommendation score. However, this simply reinforces the primacy and utility of the Core Service Quality Indicators, and suggests that the Additional Service Quality Indicators do not offer much in addition.

⁴⁶ Here, we note that we responded to a detailed matrix of possible service quality measures on 1 April 2016, and so would urge the CMA to avoid duplication of effort by suggesting the FCA undertake a similar review.

⁴⁷ PDR, at paragraph 3.191.

⁴⁸ PDR, at paragraph 3.170.

⁴⁹ For example, common terminology will not ensure that these measures are treated consistently.

- 2.7 We consider that the introduction of any such measures should be trialled and would be happy to work with the FCA on a package of metrics that would be useful for customers.
- 2.8 The PDR envisages the Additional Service Quality Indicators being published on providers' websites (in reasonably accessible locations) and made available as open data.⁵⁰ This is apparently on the basis that PCWs and FinTech companies would be likely to access the data. The FCA should monitor if and by who this information is accessed in practice.

3 Remedy 3: Measures to increase customer awareness of the potential benefits of switching and prompt customers to consider their banking arrangements

- 3.1 In our response to the Provisional Findings, we stated that: "*We support these notifications in principle on the basis that, implemented correctly, they may encourage customer engagement and switching*".⁵¹ Subject to confirmation from the Information Commissioner's Office that auto-enrolment does not give rise to data protection issues, we continue to support the use of prompts, and trialling those prompts to ensure their effectiveness.
- 3.2 The key issue in the design of this remedy is that, by delegating the trials to the FCA, the CMA will not control the implementation of this remedy. As a result, the remedy will go from being a central plank of the CMA's remedy package, to a measure that will result in an FCA consultation in summer 2018.⁵² As such, it would appear that the findings the CMA has come to, and the comments, criticisms and inputs from the respondents to this market investigation, risk being overtaken by events before this remedy comes into force. We therefore consider it important that the CMA delimits the scope of the review in order to:
- (a) Actively monitor costs. Not only will there be costs associated with implementation, but there will be costs associated with cooperating in the trials. We agree that all, or substantially all, providers should contribute, but we would encourage the CMA and the FCA to be careful not to trial so many prompts in different guises over a long period of time, that the costs of co-operating in the trial become disproportionate to the outcomes.
 - (b) Be explicit on the role of "auto-enrolment". From the PDR it is not clear if the CMA envisages:
 - (a) auto-enrolment for new customers;
 - (b) auto-enrolment for new and existing customers, as it is considering in the context of Remedy 8; or
 - (c) no auto-enrolment, but rather a mandated set of opt-in prompts.

⁵⁰ PDR, at paragraph 3.175.

⁵¹ Response to the Provisional Findings, at Annex 2, A, 1.1.

⁵² PDR, at paragraph 3.335.

- (c) Be explicit on the number of prompts it considers reasonable for providers to provide, bearing in mind the risk of over-communication: As we stated in our response to the Updated Issues Statement, “[b]ombarding customers with excessive amounts of information is likely to create confusion and possibly result in even less engagement”.⁵³
- (d) Clarify the position on the “communication of the rewards or benefits of switching”, considered at paragraphs 3.288-3.294 of the PDR. We agree that the prompts should not recommend another product or provider, but do not agree with the general proposition that the prompt should aim to present customers with the financial gain they could achieve, whether this is on the basis of an average possible gain, an indicative gain, or a personalised gain. As is clear from our previous submissions, and the CMA’s experience in conducting the PCA pricing analysis, there are a number of difficulties with accurately calculating a customer’s available gain.⁵⁴ As such, it is not appropriate to leave these options open for testing. Given the key role played by APIs and PCWs in the CMA’s remedy package, it is more appropriate that customers are directed to comparison tools, as the PDR sets out in paragraphs in 3.295 to 3.298.
- 3.3 While we consider that providers are the correct source of prompts, we see this as an area where intermediaries could play a role in the SME market (see further Remedy 14 below).

Switching

4 Remedy 4: Reforms to CASS governance

- 4.1 In our Response to the Provisional Findings, we stated that this should not be a high priority for the CMA. However, on the basis that the cost is low and it may lead to improvements, we welcome this remedy. We agree that oversight of CASS should be “light touch” as CASS has historically worked well and so should not be subjected to unnecessary regulatory intervention. The PSR’s role should therefore be carefully delimited.

5 Remedy 5: The length of the redirection period

- 5.1 As the CMA recognises, the contemplated extended redirection period (redirection in perpetuity, subject to any 13 month gap), is already being implemented. While we consider this will only have a limited impact on customer behaviour, it will be a positive change.⁵⁵
- 5.2 We would welcome the CMA’s more express disapproval of ANP as a possible improvement to the market. Having considered that the benefits of ANP are disproportionate to the benefits they may bring, the CMA should be more decisive in this fact. The PDR states:

“Both ANP and our proposal for an extension to the redirection period are ways of addressing the same underlying concerns relating to incoming payments going astray in the switching

⁵³ Our response to the Updated Issues Statement, paragraph 5.5.

⁵⁴ Our response to the Provisional Findings, at Annex 2, A, 1.1(d).

⁵⁵ This also appears to be the CMA’s position: “While unlikely to act as a catalyst for customers to switch, it may act as a ‘hygiene factor’, and help reduce customers’ fears about the risks of switching using CASS”, PDR, at paragraph 4.97.

*process. While ANP is generally easier for customers to grasp and tends to perform better in customer surveys, in practical terms, our proposal of extended redirection is effective at reducing the risks of missed payments. ANP also raises some concerns about security, specifically a greater perceived danger of account fraud. Further, our proposal, which allows for permanent redirection for customers who may need it, costs substantially less to implement than ANP and is capable of much more rapid implementation, which is an important dimension of effectiveness. After taking all factors into account, extended redirection is effective in addressing our concerns, and is much less expensive and onerous to implement compared with ANP.*⁵⁶

- 5.3 However, despite this, at paragraph 46 and footnote 313 of the PDR, the CMA suggests that the PSR is progressing its analysis of ANP. It is unclear to us why that work should continue when the CMA has unequivocally found extended redirection to be a more effective and less expensive solution.

6 Remedy 6: Provision of transaction history

- 6.1 While in principle we support the aim of this remedy, which in fact is similar to our current practice,⁵⁷ enforcing the proposal is of marginal benefit in practice.⁵⁸ Moreover, for SMEs, for whom this remedy would be more worthwhile,⁵⁹ we suggest that a holistic approach that gives SMEs better control of their own data would be more effective.

7 Remedy 7: Measures to increase awareness of and confidence in CASS

- 7.1 We welcome this remedy. As a scale challenger we have long supported increasing awareness of the benefits of switching and of CASS.⁶⁰ There are three inter-related areas that the CMA should give further consideration to: (i) the most effective means of raising awareness of CASS; (ii) the most suitable targets; and (iii) the proportionate funding levels.

Effective awareness measures

- 7.2 We would emphasise the possible benefits of switching through CASS and the reassurance/guarantees it offers, rather than the mechanics of the system. We consider it is vital that consumers' awareness of and confidence in CASS goes hand-in-hand with the benefits it may bring to them.

⁵⁶ PDR, at paragraph 4.6(a)

⁵⁷ Customers and ex-customers can request their San UK statements to be provided up to 6 years after the account was closed (this time limit is in place for data protection reasons). There is a charge for this service: £5 for one statement or £10 for multiple. Charges are the same for current and former customers.

⁵⁸ For example, from a providers' risk assessment perspective, transactional history from five years ago is too old to be useful. From the customer's point of view, the remedy does not consider that SMEs likely use accounting software so can hold their own transactional history. We know from our experience that many SMEs use Sage, Intuit or Xero accountancy software to help run their businesses. As we set out in section 15, we consider the CMA could do more to promote a central data routing mechanism such as BDI Factern for SMEs in owning and controlling their own data.

⁵⁹ The CMA references the advantage of incumbent banks holding BCA transaction history at paragraphs 8.149, 9.35 and 10.220 of the Provisional Findings.

⁶⁰ See, for example, paragraph 7.4 of our response to the Issues Statement, dated 3 December 2014; and our Response to the Provisional Finding at Annex 2, A, 2.1.

- 7.3 The CMA has changed its position since the publication of the Notice of Possible Remedies, provisionally deciding that general advertising of CASS is not an appropriate medium for conveying the benefits of switching, because the message could not be specific to the recipient.
- 7.4 We do not consider this is a reason to abandon that element of the campaign. Indeed, the CMA, in its press release on the publication of the PDR, states: *“Already, if personal customers switched to a cheaper product for them, annual savings could be on average £116; ranging from £89 on average for customers who do not use an overdraft, to £153 on average for overdraft users.”*⁶¹
- 7.5 Such a message, which successfully sought media coverage, is a powerful tool in engaging customers to consider their banking arrangements. This sort of general message is also far easier to implement than the specific and on-going requirements to display switching benefits in relation to prompts considered by Remedy 3 (and we set out those difficulties in paragraph 3.2(d) above), and necessary since Remedy 3 will not be implemented in full for some years.

Suitable targets

- 7.6 The CMA should ensure that:
- (a) targets are achievable;
 - (b) targets are measurable;
 - (c) the cost to attain the target is proportionate; and
 - (d) that (a) to (c) are considered in the context of targeted customer segments.
- 7.7 As the CMA describes, the measuring of awareness and confidence in CASS has shown disparate results, with various bodies reporting different outcomes. We welcome Bacs’ endeavours to strengthen and develop its metrics, including the proposed new ‘consideration’ metric which will address a gap in the current measures. From our experience, building awareness of initiatives such as CASS is difficult. Moreover, and as the CMA recognises, some customer groups are more difficult to reach than others, with SMEs being a prime example. As we explained in our response to the Provisional Findings, research from BDRC has found that, for government-backed lending schemes, SME awareness is very low.⁶²
- 7.8 While we welcome the renewed focus on reaching those segments (including younger and financially disadvantaged customers), it may be that that 75% awareness and confidence levels are too high to be realistic, in particular in relation to those groups that are harder to reach. Moreover, awareness and confidence levels that are that high may not be necessary to drive the levels of customer engagement and the switching threat required to increase competition and improve consumer outcomes. The PDR appears to contemplate that different targets may be

⁶¹ Competition – press release dated 17 May 2016: CMA wants banks to work harder for their customers.
⁶² Our Response to the Provisional Findings, at Annex 2, A, 2.2

considered,⁶³ and we suggest that the CMA should not necessarily apply the targets set before CASS was launched.

Funding, cost and proportionality

- 7.9 Setting appropriate targets matter for reasons of cost and proportionality. To build awareness and confidence, there is a danger of diminishing returns. The CMA suggests that the measures are proportionate on the basis of the £9.2 million already allocated for CASS promotion: but there would be a point at which the costs would no longer be proportionate. We would ask the CMA, and latterly, the PSR, to give this serious and on-going consideration.
- 7.10 In order to maximise the cost efficiency of the remedy, we encourage the CMA to consider:
- (a) the costs and results of other, similar public awareness campaigns;⁶⁴
 - (b) to the extent tools are available to both PCA and SME customers, using PCA-focused marketing which can have positive spill-over effects in increasing SME awareness;
 - (c) using digital marketing, as we consider this is likely the most cost-effective way to promote CASS, and would allow for the greatest measurement of impact;⁶⁵
 - (d) using the ‘Simpler World’ website so that this can become a central information hub for customers;
 - (e) strengthening Bacs’ proposal to work with intermediaries, particularly in the SME sector (see further our comments in relation to Remedy 14); and
 - (f) requiring certain third parties, for example PCWs, to carry CASS branding and information prominently on their websites and communications.
- 7.11 We agree that Bacs is the correct entity to manage the campaigns, and that the current funding arrangements should not be changed.

Overdrafts

8 Remedy 8: Trialling measures to increase customer awareness of and engagement with their overdraft usage and charges

- 8.1 We have previously expressed doubts concerning auto-enrolment, on the basis that there would be data-security concerns inherent in providing alerts in non-secure formats.⁶⁶ As with Remedy 3, subject to confirmation from the Information Commissioner's Office that auto-enrolment does

⁶³ For example, the suggestion that KPIs around awareness and confidence may be reviewed by the PSR (PDR, at 4.218).

⁶⁴ We note that the CMA has considered the “Power to Switch” campaign (PDR, at 4.197(c)) which we noted in our Response to the Provisional Findings.

⁶⁵ Further, we would note that, in our experience, television advertising is not well suited to carrying specific and detailed messages that are designed to drive behavioural change, and does not provide value for money in those circumstances.

⁶⁶ See, for example, our response to the Supplemental Remedies Notice at 2.6.

not give rise to data protection issues, we continue to support the use of prompts, and trialling those prompts to ensure their effectiveness.

8.2 In addition, the CMA should consider how to apply that to existing customers in a way that does not cause those customers concern or anxiety.

8.3 We consider that text alerts, or push notifications where customers already use a mobile app, are reasonable mediums; and that the timing of the alerts after the trigger event as described in paragraphs 5.57-5.58 of the PDR are reasonable.⁶⁷

8.4 [REDACTED].

9 Remedy 9: Supplemental measures to help customers engage with and manage their overdraft usage

9.1 This relates to grace periods. We consider that our grace periods are already more than compliant with the CMA's proposal that banks ought to tell customers that they have until at least 2pm to credit their account, and allow for an "actual" grace period until 5pm.⁶⁸ Our alerts already contain "calls to action". As such, the only material change included in this proposal would be the auto-enrolment element, discussed above in relation to Remedy 8.

10 Remedy 10: Measures to limit the cumulative effect of unarranged overdraft charges (the Maximum Monthly Charge (MMC))

10.1 As we stated in our response to the Supplemental Remedies Notice:

"We are in favour of an uncapped MMC in the manner favoured by the CMA; that is to say, an MMC that providers set themselves rather than one which is set by a regulator. Structured in this way, the remedy is a useful transparency measure, rather than a price control."⁶⁹

10.2 We consider that the CMA has correctly identified the core issue is in the transparency of charges (see, for example, the PDR at paragraph 5.158). However, we consider that it is critical for the CMA to mandate that providers inform customers of the maximum total fees – including paid and unpaid item fees - they could incur in a statement month for both arranged and unarranged overdraft usage (rather than just unarranged overdraft usage).

10.3 We set out below in full our position from our response to the Supplemental Remedies Notice, and explain why the CMA has not properly accounted for these points.

"A more fundamental concern we have is that this Overdraft Remedy is unnecessarily restricted to unarranged overdraft fees. We do not consider there would be any merit in requiring providers

⁶⁷ There will of course be circumstances where prompts are not received, where the customer does not have signal, for example.

⁶⁸ We notify customers that they should credit their account by 4pm.

⁶⁹ Our response to the Supplemental Remedies Notice at paragraph 5.1.

to specify an MMC applicable to just unarranged overdrafts. The point of an MMC would be to forewarn a customer of the maximum monthly overdraft charge they could incur. This is why our Key Facts Document shows that maximum overdraft cost across both arranged and unarranged usage. To the extent arranged overdraft fees were carved out of the MMC, the MMC presents at best a partial view, and at worst a misleading view, of the potential charges a customer could face. Moreover, limiting the MMC to unarranged charges would increase the “circumvention risk” identified by the CMA. Providers could compete to provide low MMCs for unarranged usage whilst increasing fees for arranged overdrafts. This risks confusing customers as well as adverse consumer outcomes.

Of course, this would not prevent any provider from disaggregating their MMC to show a maximum charge for arranged usage, and a maximum charge for unarranged usage, if they considered that helpful for customers. Where providers currently advertise maximum unarranged overdraft fees only, we consider the CMA should require such providers also publish the maximum total fees customers could incur from arranged and unarranged overdraft usage in a month. This would ensure customers are able to compare like products”.⁷⁰

- 10.4 The CMA has not adequately considered this issue in the PDR; simply noting that “*including arranged overdraft charges in the MMC is not necessary to target the concerns identified relating to significant detriment from unarranged overdraft use.*” Given the aim of this remedy is to enhance transparency, we consider it is fundamental that MMCs allow customers to properly compare costs.
- 10.5 The CMA considers “*a single, comparable MMC figure for a given PCA ... could help customer understand the total charges each month that they are at risk of incurring if they use an unarranged overdraft facility*” (emphasis added).⁷¹ However, this does not take into account the likelihood that the same customer will have used their arranged overdraft facility (and incurred charges for this). Our experience shows that [30] % of customers who used an unarranged facility in 2015 also used an arranged facility. The costs incurred by overdraft users in a month in which they use an unarranged facility would necessarily include all fees associated with the arranged overdraft usage.
- 10.6 In these circumstances, it is inappropriate to exclude fees relating to arranged overdraft usage, which can have a material impact on the overall level of fees charged to customers. Doing so would mean that a customer will be unable to properly assess the actual cost of overdraft usage as between different providers on the basis of an MMC as currently proposed. This runs contrary to the aim of the remedy.
- 10.7 In this regard, the CMA has considered a possible “rebalancing of charges” if an MMC is imposed, but is unconcerned by such a rebalancing as:

⁷⁰ Response to the Supplemental Remedies Notice, at paragraph 5.5-5.6.

⁷¹ PDR, at paragraph 5.156, emphasis added.

- (a) competitive pressure is weakest for unarranged overdraft users, so rebalanced charges elsewhere would be minimised as affected customers are more price sensitive; and
- (b) the CMA's other remedies are designed to increase price sensitivity.⁷²

- 10.8 This analysis does not consider the possibility that the rebalancing would be between unarranged and arranged fees, such that heavy unarranged overdraft users would still pay high fees, but those fees would be reallocated towards arranged overdraft usage. The same customers could, on the CMA's proposal, pay the same amount of money, and still not be able to compare options properly. [3<].
- 10.9 We agree with the CMA's analysis on providers' willingness to lend, distorting customer choice, and increased usage.⁷³ On the CMA's analysis, we can see no evidence that extending the MMC to cover arranged overdraft charges risks "*adverse unintended consequences, including wider distortions to overdraft supply*" in circumstances where the CMA does not consider there to be any such risk on the MMC as proposed. In our view, there is no reason that the extension of the MMC to arranged overdraft fees should change the CMA's analysis.
- 10.10 We agree that MMCs should be monthly (whether by calendar or statement month, and we welcome the flexibility in providers choosing which is more appropriate for their customers) and the requirement that disclosure should be "no less prominent" than other fee disclosures. We also agree that this remedy should apply to all PCA providers.
- 10.11 The CMA has made clear that regulated price caps would lead to material adverse consequences for consumers, a position we agree with. As the CMA rightly points out, capping fees restricts how PCA providers could compete with one another.⁷⁴ We agree that an MMC set by each provider for each account is preferable to a price control, both in terms of effectiveness and proportionality.
- 10.12 To the extent, therefore, that the FCA should carry out further work on MMCs (in which respect our comments in Section 4 apply), the CMA should clarify that it does not recommend that the FCA investigates capping overdraft fees.

11 Remedy 11: Measures to encourage PCA customers to engage more with overdraft features

- 11.1 This remedy provides for a recommendation to the FCA to undertake a review of further measures (e.g. overdraft opt-outs, fee structures, and customer communications) to engage customers, particularly during account opening.

⁷² PDR, at paragraph 5.170.

⁷³ PDR, at paragraphs 5.164-167; 5.168-9; and 5.172 respectively.

⁷⁴ PDR, at paragraph 5.180.

- 11.2 In addition, Remedy 12 provides for a recommendation to the FCA to consider requiring online overdraft eligibility tools, after the implementation of open APIs, and undertakings from Bacs to work with banks to undertake review of account opening in respect of "firm" overdraft offers.
- 11.3 It follows that, in accordance with our comments on the continual review of the sector in Section 4, the CMA should define the scope of any review role by the FCA, to avoid re-investigating issues that have been settled by this investigation. See in particular our comments in relation to overdraft opt outs at Section 4.6(b) above. To the extent the FCA review would look at fee structures, we note that the CMA has been very clear in opposing interference with providers' ability to set their own prices.
- 11.4 [REDACTED].
- 11.5 In the context of encouraging engagement among overdraft users there is still a lack of consistency in the market over terms such as "unarranged" and "unauthorised" overdrafts which does not lend itself to being transparent and easy for customers to understand and compare.⁷⁵
- 11.6 The Payment Accounts Directive includes a requirement to standardise terms and definitions for describing services linked to payment accounts that are subject to a fee. We note that the European Commission's process required the FCA to submit to the European Banking Authority (EBA) in September 2015 a list of common terms in the UK, which included the term 'unarranged overdraft'. The EBA's consultation process is on-going.

12 Remedy 12: Measures to facilitate account searching and switching

- 12.1 Please see Remedy 11 above: we consider these two remedies together.

SME measures

13 Remedy 13: Measures to increase transparency of the cost of and eligibility for SME lending

- 13.1 These measures split into two: (i) increasing loan rate transparency; and (ii) ordering the creation eligibility indicator. We support the principle of transparent pricing, on which both measures are predicated, and in fact already provide an online calculator for SMEs to consider indicative pricing based on loan amount and the repayment term.⁷⁶

⁷⁵ In its Feedback Statement (FS15/4) the FCA also recognised an agreement between HMT and seven major providers to adopt the "arranged/unarranged" terminology, and we encourage the CMA to enforce that agreement, supporting the need for consistency in the interests of transparency for customers. We note that in the PDR, the CMA recognises this issue, noting that: "For convenience, we use the term unarranged overdraft in this document to refer to Barclays' emergency borrowing facility and other PCA providers' unarranged overdraft facilities (or unplanned or unauthorised overdraft facilities)" (at footnote 399).

⁷⁶ <http://www.santander-products.co.uk/loans/business/calculator/index.html?amount=5000&duration=48>.

Loan rate transparency

- 13.2 We broadly agree with the remedy as proposed: applying to all providers, in respect of unsecured loans and overdraft facilities up to £25,000. In relation to the pricing data disclosed, the CMA is proposing to:
- (a) require lenders to publish a representative APR/EAR for unsecured loans and overdrafts offered to SMEs of a value up to £25,000, and to use this format when publishing SME lending prices in marketing and advertising material for these products;
 - (b) require lenders to make available to comparison sites and finance platforms data on how these representative rates change with loan and overdraft size (up to £25,000) and with loan term. We note that this is the data behind simple calculators such as are offered for many personal lending products. These would allow customers (through comparison sites and finance platforms) to adjust the size of the loan or overdraft, and the term for loans, to see the representative rates relevant for the borrowing they require; and
 - (c) encourage these lenders to publish simple calculators, as described immediately above, on their websites.
- 13.3 [REDACTED].
- 13.4 However, one issue that causes us more concern is that the CMA proposes that the representative rate must be offered to at least 51% of customers. Our approach for this type of lending has been to make public the range of rates offered [REDACTED]. Our online repayment calculator provides potential applicants with an illustration of repayments for different loan terms / amounts [REDACTED]. This online calculator does not provide an indication of the specific price the applicant may be eligible to receive given their own financial circumstances and credit history.
- 13.5 [REDACTED]. However, we would be wary of using that as the single indicative rate. The percentage breakdown depends on the terms of the loans and the creditworthiness of applicants (which is outside our control) and is subject to change. [REDACTED].
- 13.6 As such, we would suggest that our approach, where the range of possible applicable rates is published, is a reasonable way forward. However, if the CMA continues with the approach that the rate must be offered to 51% of borrowers, we would suggest this requirement applies subject to a threshold: such that lenders who do not offer loans to a specified minimum number of borrowers are not bound by the 51% requirement.
- 13.7 A further point is that this remedy should only apply to loans with a term or commitment greater than one year, and so not cover short-term cash flow financing, where APRs are not the most appropriate rate.
- 13.8 Further, we do not support any extension of this remedy to unregulated lending.
- 13.9 [REDACTED].

- 13.10 Subject to clarification on the points above, it may be that three months is an overly ambitious timeframe in which to implement this remedy.

Loan eligibility indicator

- 13.11 We have previously submitted that while indicative pricing tools are helpful, their design and content should be left to individual banks' discretion. We have also submitted that the most effective way to achieve the aims of this remedy is via the introduction of a credit passport, which would speed up the application process and assist SMEs seeking finance to consider their options.

- 13.12 In relation to the loan eligibility indicator, we consider that:

- (a) there should be consistency in the threshold for the loan rate transparency remedy and the loan eligibility indicator; and
- (b) San UK should not be included within the scope of the Order.

Consistency in threshold

- 13.13 We consider that for consistency and ease of comparability, the thresholds for each of loan rate transparency and the loan eligibility indicator should be the same:

- (a) The value threshold should be maintained at £25,000. This would ensure consistency between the two aspects of the loan transparency remedy, which would be important in the development of data sharing through open APIs that the CMA envisages in relation to the remedy. The CMA can only show one party, Business Finance Compared, as being in favour of the higher threshold, and we note that the Order would not apply to them.
- (b) Neither remedy should include secured lending, which by nature is very different (and therefore the rationale for exclusion should be the same across both remedies). In particular, secured lending introduces a range of variables that are not applicable to unsecured lending: and *"the valuation of assets ... is frequently not a straightforward process"*.⁷⁷ The PDR shows that the majority of lending up to £25,000 (or £50,000) is unsecured. We understand that low value secured lending is often to "top up" existing facilities. The reasons for excluding secured lending from the transparency measure apply equally to the eligibility and pricing indicator measure. Indeed, as indicative prices shown by a calculator will be required to have a degree of accuracy, but will rely on customers submitting their own data, the more variables that are introduced, the more difficult it will be for banks to comply with any accuracy requirement. In the alternative, if banks could exclude cases where the data submitted was incomplete or inaccurate in some regard from their accuracy requirements, there would then be an additional and complex layer of

⁷⁷ PDR, at paragraph 6.48(b).

monitoring of banks' compliance. For lending above £25,000, the terms are more likely to be individually negotiated.

- 13.14 On implementation, the CMA suggests that the relevant open APIs should be functional three months from the Order. While it is certainly possible that banks should publish indicative pricing on their websites within three months, this would not be sufficient time to complete the open data element. The timeframe considered in Remedy 1 should be equally applicable here.

Why San UK should not be included in the loan eligibility indicator Order

- 13.15 In any event, San UK should not be included within the scope of this Order. The CMA considers in paragraph 6.100 of the PDR that, to provide good coverage of the UK SME lending market and to cover "leading lenders", lenders with a share of 5% or more should be included. In the UK market, San UK does not qualify on that metric. As a UK lender, we do not have 5% or more of the UK lending market.⁷⁸ In no sense can we be described as a "leading lender"⁷⁹ and we should therefore be excluded from the Order.
- 13.16 However, the CMA has, in order to cover both the Great British and the Northern Irish markets, looked at lenders with a 5% share or more in lending in Great Britain or in Northern Ireland. It cannot disaggregate those shares from the total UK shares, and so it has used a proxy of business current accounts in those territories. On that basis, San UK is included.
- 13.17 In the Great British market, it is clear that our share in BCAs is significantly higher than our share in lending. [X]. Moreover, we have consistently argued that the relevant geographic market is UK wide: the relevant products on offer are the same, and this remedy would apply in a consistent way across the UK. It should therefore be applied on UK share of supply; and San UK should be excluded. Further, all our comments in Section 3 apply.
- 13.18 [X].
- 13.19 The CMA notes that other lenders already have sophisticated credit underwriting tools required to comply with this remedy (HSBC and LBG). Therefore to oblige San UK to develop equivalent tools to much larger competitors, in a market characterised by low volumes of switching, would impose significant costs on us, not incurred by larger banks, and would be a direct penalty on our smaller size and more nascent position in the SME market.
- 13.20 [X].

14 Remedy 14: Measures to facilitate comparisons of SME banking products

- 14.1 Our fundamental concerns with the Nesta Proposal and the proposal that it be funded by banks other than the Big Four banks are set out in Section 2 above. We would also encourage the CMA

⁷⁸ "SME Outcomes", sent to San UK on 13 May 2016.

⁷⁹ PDR, at paragraph 6.100.

give fuller consideration to the practical points outlined in our Response to the SME PCW Working Paper.

- 14.2 The PDR also considers measures in relation to the role of professional advisers and to soft searching in the context of facilitating comparison. We comment on these below.

Professional Advisers

- 14.3 The CMA has provisionally decided to recommend that BIS works with the British Business Bank and professional associations such as ICAEW to explore ways in which their members can “channel advice on choice of providers and sources of finance”.⁸⁰
- 14.4 We welcome the CMA’s recognition of the important role played by intermediaries in the market today, particularly as, in other remedies, the CMA is looking to “facilitate the growth of a dynamic intermediary sector”.⁸¹ As we have noted throughout the investigation, most recently in our Further Submissions dated 14 January and at our Oral Hearing in December 2015, we believe that intermediaries are key in influencing the banking decisions made by SMEs.
- 14.5 As the most effective engagement with SMEs is likely to be through those interactions that already occur as part of the normal course of business, we urge the CMA to consider more closely the role professional advisers can play. We recognise, as the CMA does, that SMEs do not tend to seek financial advice before choosing a BCA or a lending product. However, we do not consider that professional advisers need to be giving “financial advice” to play a useful role in engaging SMEs. “Advice” suggests that providers would assist in the “assess” stage of the switching framework; we would suggest that the emphasis of this remedy should be on them making their clients aware of different banking options (engage) and encouraging them to use available comparison tools (for the SMEs to assess themselves). As we have previously explained, educating professional intermediaries will also help prevent them from discouraging their clients from switching (as per the CMA’s own research) and so act as a barrier in themselves.⁸²
- 14.6 The CMA could, for example, seek undertakings from professional bodies that would require members to inform businesses of the tools that are available to help them shop around for and switch financial services and providers, such as price comparison websites and CASS. Alternatively, undertakings might require professional advisers to have links to comparison tools on their websites.

Soft Searches

- 14.7 We are broadly in favour of the CMA’s proposal. We note that this is an outstanding issue from the SBEE implementation that still needs to be addressed. Each of the three SBEE platforms has a slightly different method of “soft searching” and the CMA should be aware that having a

⁸⁰ PDR, at paragraph 6.122.

⁸¹ PDR, at paragraph 3.5.

⁸² See further our Response to the Provisional Findings, at Annex 1, 1(f) and Annex 2, A.1.1(c) and our Response to the Updated Issues Statement at paragraph 5.3 and 5.9.

greater ability to shop around could have a detrimental impact on an SME's score without a solution being put in place.

14.8 In implementing this remedy, we consider the CMA should have regard to:

- (a) our comments in Section 4 on continual review;
- (b) ensuring that any review of soft searching is cognisant of other initiatives relating to SME data sharing;
- (c) the potential cost implications to ensure that changes are not disproportionately expensive to the gains accrued. The outcome of this review could potentially double search costs with credit reference agencies if a soft search has to be completed, and then a subsequent search is required if the customer wishes to proceed; and
- (d) the need to clarify current guidance on data protection restrictions, which is at present unclear, for example on the carve out provision for soft searches in circumstances where the provider has not received consent from all directors of a business.

15 Remedy 15: Measures to reduce incumbency advantages by increasing the sharing of SME data

15.1 By this remedy, the CMA is proposing that HMT conducts a review in 2018 of the efficacy and impact of the measures implemented under the SBEE Act and other initiatives intended to facilitate the sharing of SME information, including Factern, aggregation tools and APIs.⁸³ Our comments in Section 4 above apply.

15.2 [REDACTED].

16 Remedy 16: Measures to make account opening easier and improve the switching process.

16.1 We are in favour of, where possible, standardising BCA account opening. However, rather than focusing on the form itself, this remedy should focus on the data that SMEs require to satisfy BCA account opening forms and other banking services applications. As the CMA knows, SMEs switch BCA provider relatively infrequently, so to any given SME, a standardised form may be of limited use. [REDACTED].

16.2 We believe that incorporating standardised opening procedures with our Business Data Initiative credit pass-porting initiative would improve the switching process.

⁸³ PDR, at paragraph 6.214.