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By email to: retailbanking@cma.gsi.gov.uk

7 June 2016

Dear Alasdair,

Response to provisional decision on remedies

The BBA is the leading trade association for the UK banking sector with 200 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Eighty per cent of global systemically important banks are members of the BBA. As the representative of the world's largest international banking cluster the BBA is the voice of UK banking.

More specifically, the BBA represents a spectrum of personal and business current account providers, and provides an overview of key issues where our members have varying views. Overall, BBA supports the direction of the provisional remedies, which will enhance consumer engagement and competition in the market. In order to assist the CMA in finalising the design of the remedies, we would like to highlight some industry-level technical challenges that CMA will need to consider.

In particular, we would like to comment on proposals relating to data sharing under the 'foundation' remedies for PCA customers and SMEs, as well as to the SME additional remedies to some extent. First, we wish to emphasise that we support the proposal to develop a system of APIs to facilitate the sharing of banking information and data. We consider that this has the potential to increase consumer choice, enhance competition and encourage the development of new, innovative services.

Protecting Customers' Data

However, certain challenges do need to be addressed in order for these proposals to succeed and achieve their potential. As an overarching point, we observe that data protection and security concerns need to be addressed in order to ensure that customers are protected and all participants can manage their liability effectively. If these obstacles are not properly dealt with there will be a material risk of customer detriment through fraud, security breaches or other data protection failures. This would likely undermine consumer trust and prevent the initiatives from achieving their potential.

As the CMA observes, an appropriate governance framework is therefore required. We understand that HM Treasury has also been made aware of the need for a formal authority (which does not need to be a new body) to oversee standards and the appropriate use of customer data.

The Open Banking Working Group (OBWG) did a lot of work towards addressing these underlying issues but also highlighted that more work would be necessary (see for example the key recommendations in the Regulatory and Legal Considerations chapter, pages 64-65 of the Open Banking Standard).

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Where personal data are involved, addressing the issues above will take more time, even for the redacted midata datasets referenced in the provisional remedies. Although risks are mitigated to an extent by the redactions, midata files still contain data of value to fraudsters including balance, location of withdrawals and size of debits and credits. Appropriate governance remains important and will take time to establish. Time will of course also be needed for the technical build and development of standards.

Though not universal, the majority view of our members is that the proposed timeframe for implementing an API to share midata datasets by end Q1 2017 is not feasible and could not be achieved before 2018. While the Q1 2017 deadline was proposed by the OBWG, this assumed prompt continuation of the OBWG project by HMG, which did not eventuate.

The CMA is also asked to consider this timeframe in the context of the Northern Ireland-based banks which do not already have systems in place to produce customers' midata files.

Promoting Public Data Usage

Where there is no personal data involved, the challenges are reduced and implementation can be faster, hinging primarily on defining standards and completing the necessary IT build. We therefore support the delivery of non-personal open data in Q1 2017, as proposed by the CMA.

However, CMA should also consider whether it is appropriate to allow a bank to share product data, etc, via the API framework (thus potentially attracting customers) without that bank also making transactional data transfers available to customers (which could result in customers switching away).

Legislative Coordination

With regards to the longer term deliverable of read / write access, we note that there is a degree of overlap with PSD2. However, any differences in the timeframes and the mechanisms under PSD2 and the CMA's remedies (such as mandating datasets before the European Banking Authority produces its guidance) will create significant risks of duplication and inconsistency, resulting in unnecessary costs and consumer confusion. The CMA should therefore align more closely with the PSD2 timetable and work actively with HM Treasury and the European Banking Authority as the rules for access under PSD2 are set.

Overdraft-related Remedies

Additional remedies are proposed which are targeted at PCA overdraft customers. While we are supportive of the approach to increase customers' awareness of their overdraft usage and to help them make more informed choices, further consideration of the detail should be undertaken to ensure that the remedies can effectively support this objective.

The Financial Conduct Authority released a discussion paper in 2015 (DP15-05) which identified from their behavioural economic research that ineffective communications can overwhelm and confuse consumers and even deter people from making informed decisions. Smarter and more effective communications are required to engage consumers, rather than a process driven approach, which could have the unintended consequence of information overload.

Further engagement should therefore be sought on:

- Definition of an unarranged overdraft – this needs to be more clearly defined (e.g. does this extend to include 'fee free buffers' which do not incur overdraft charges, or excesses over an arranged overdraft?)
- Frequency of communication – if customers move in and out of an arranged overdraft during the month, is there a need to alert customers each time?

- The ability for consumers to opt-out of the alert messaging.

Switching prompts

Following on from the above comments, further work is needed to develop the switching prompts remedy. Again, there is a risk that excessive or poorly timed prompts could upset customers or cause them to disengage. Limits on the number of prompts within a time period could be an appropriate mitigation. Careful instructions to, and testing by, the FCA will be required.

Properly addressing these issues will help ensure that the CMA's proposed remedies achieve their objectives, driving innovation and competition in UK banking. We would be happy to assist the CMA with any further questions you might have.

Yours sincerely,

Eric Leenders

Managing Director, Retail and Commercial Banking
BBA