HSBC

23 December 2016

**RESPONSE TO THE CMA'S FORMAL CONSULTATION ON THE DRAFT RETAIL BANKING MARKET INVESTIGATION ORDER 2017**

HSBC is committed to ensuring the successful design and implementation of remedies to address the AECs identified by the CMA in its Final Report on the retail banking market investigation. HSBC therefore welcomes the opportunity to comment on the draft Retail Banking Market Investigation Order 2017 (the ***Draft Order***) and the draft explanatory note accompanying the Draft Order (the ***Draft Explanatory Note***).

This response covers the following key areas:

- **Open API standards:** HSBC's proposals seek to ensure that the stability of Providers' systems will not be compromised and that the Read/Write Standard will be aligned with PSD2.
- **Transaction histories:** HSBC's proposals seek to ensure that customers have the opportunity to opt out from receiving their Payment Transaction History where they do not wish to receive this.
- **Alerts:** HSBC is concerned that requiring Providers to send Alerts when customers enter a charge free buffer zone may lead to customer confusion and disengagement.
- **Publication of SME loan rates:** HSBC considers that it would be more helpful for customers if Providers were required to display the Representative simple annual interest rate for Unsecured Loans, rather than the Representative APR.
- **Eligibility tool:** HSBC considers that the eligibility tool should only be required to provide an "indicative yes" or "indicative no", rather than a percentage likelihood of eligibility. Access to the eligibility tool for third parties should also be required on a "best endeavours" basis, as Providers do not have control over third party engagement.
- **Customer transaction data:** HSBC considers that it would be helpful to clarify the obligation to provide transaction data samples to entrants of the Open Up Challenge to avoid potential breaches of data protection law and to remove the reference to Midata.

HSBC's detailed comments are set out in the table below. In order to assist the CMA, HSBC has proposed drafting changes to the Draft Order and/or Draft Explanatory Note to address each of the issues identified.

| Article | HSBC Comments |
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| | **PART 2: OPEN API STANDARDS AND DATA SHARING** |
| **10.1; 12.1; 13.1; 14.1** | <u>Fair usage policy for data requests to protect Providers' systems</u><br>Under Article 10.1 of the Draft Order, the Implementation Entity "*will agree, implement, maintain and make widely available, without charge, open and common banking standards*" for the Read-only Data Standard and the Read/Write Data Standard.<br>HSBC is fully committed to the implementation of this remedy and will work closely |

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| | with the Implementation Entity on the development and implementation of the Read-only Data Standard and the Read/Write Data Standard in accordance with the Agreed Timetable and Project Plan. However, HSBC has concerns about the requirement in the Draft Order for Providers to provide the data in Articles 12, 13 and 14 free of charge to all third parties on an unrestricted basis. There is a risk that third party technical models may, by design or by error, make high volume data requests at high frequency. Any such requests may place significant strain on Providers' infrastructure, potentially leading to system failures. This may have a significant adverse impact on customers using existing bank channels (e.g. branch services, ATMs, online and mobile banking) and is clearly undesirable.<br><br>In order to mitigate this risk, HSBC would propose making the obligations to provide data under Articles 12.1, 13.1 and 14.1 subject to a fair usage policy. This policy would be determined by the Implementation Entity and would be conceptually similar to policies applied within the telecoms industry. This could be achieved through the following amendments to the Draft Order and Draft Explanatory Note:<br><br>• Article 9.1: "*'**Fair Usage Policy**' means a fair usage policy for data requests by third party providers, as determined by the Implementation Entity.*"<br><br>• Article 12.1: "*Providers shall release and make continuously available without charge, subject to a Fair Usage Policy, in accordance with the Read-only Data Standard […]*"<br><br>• Article 13.1: "*Providers must release and make continuously available without charge, subject to a Fair Usage Policy, in accordance with the Read-only Data Standard […]*"<br><br>• Article 14.1: "*Providers must make up to date PCA and BCA transaction data sets continuously available without charge, subject to a Fair Usage Policy, in accordance with the Read/Write Data Standard.*"<br><br>• Part A of Schedule 1 to the Draft Explanatory Note – additional paragraph to be inserted after paragraph 14: "***Fair usage policy for data requests** – The IE will determine a fair usage policy for requests by third party providers for reference information and product information within the scope of Article 12.1 of the Order, service quality indicators and underlying data within the scope of Article 13.1 of the Order, and PCA and BCA transaction data sets within the scope of Article 14.1 of the Order. This fair usage policy will be designed to protect against intentional or unintentional data requests that, due to their volume and/or frequency, threaten to disrupt Providers' systems or operations.*" |
| **14.1; 2.10; 10.7** | <u>Timetable for delivery of write access for customer transaction data</u><br><br>Article 14.1 of the Draft Order requires Providers to make available PCA and BCA transaction data sets in accordance with the Read/Write Data Standard. Under Article 2.10, Article 14 comes into force on 13 January 2018 (subject to Article 10.6).<br><br>HSBC welcomes the requirement under the Agreed Arrangements for the Implementation Entity to align the write functionality of the Read/Write Data Standard with the requirements under the second Payment Services Directive (***PSD2***) (see paragraph 15(c) of Part A of Schedule 1 to the Draft Explanatory Note). |

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| | However, there is currently misalignment between the deadline for implementation of the write functionality under Article 14 of the Draft Order (i.e. 13 January 2018) and the timetable for implementation of the Regulatory Technical Standards (***RTS***) under PSD2 (which are not expected to come into effect until Q3/4 2018). HSBC has concerns that this timetable misalignment will prevent the proper alignment of the write functionality under Article 14 with the PSD2 requirements, e.g. in relation to authentication standards.<br><br>Since the exact date for implementation of the RTS under PSD2 is not yet known, HSBC would propose that the Implementation Trustee should determine the timetable for delivery of write access for customer transaction data under Article 14 of the Draft Order.<br><br>HSBC would therefore propose the following amendments to the Draft Order:<br><br>• Article 2.10: "*Article 14 of Part 2 comes into force on 13 January 2018 subject to Articles 10.6 and 10.7.3.*"<br><br>• Article 9.1: "*PSD2 means Directive 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market.*"<br><br>• Article 10.7.3: "*The Implementation Trustee shall determine the timetable for implementation of the write access functionality of the Read/Write Data Standard to ensure alignment with the relevant Regulatory Technical Standards developed by the European Banking Authority under PSD2.*" |
| | **PART 5: TRANSACTION HISTORIES** |
| **20.1; 20.5** | Timeframes for the provision of Payment Transaction Histories<br><br>Under Article 20.1 of the Draft Order, "*at the time of account closure Providers shall, in relation to the account that has been closed, provide one copy of the corresponding Payment Transaction History free of charge […]*".<br><br>HSBC supports the right for customers to have access to their Payment Transaction History at the time of account closure. However, HSBC has concerns that many customers will not wish to receive five years of transaction data when they close their account. This may be a particular issue where Providers choose to provide the Payment Transaction History in paper form (as permitted under Article 20.4 of the Draft Order). HSBC estimates that five years of transaction data in paper form could amount to more than 150 sheets of paper.<br><br>HSBC notes the CMA considers (at paragraph 52 of the Draft Explanatory Note) that it would be "*inconsistent with the Final Report and the reasoning set out there*" to adopt an opt-in mechanism. However, customers should at least have the option to: (i) opt out of receiving their Payment Transaction History (as envisaged by Article 20.1 of the Draft Order); or (ii) request a shorter time period (as envisaged by Article 20.2 of the Draft Order).<br><br>Under Article 20.5 of the Draft Order, Providers are required to provide the Payment Transaction History "*within a reasonable period which shall be no later than:*<br><br>*20.5.1 seven Working Days from the date the customer has closed their* |

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| | *account in respect of 95% of account closures in any 12 month period; and*<br><br>*20.5.2 40 days from the date the customer has closed its account in respect of all other account closures.*"<br><br>These timeframes will often be insufficient for Providers to contact the customer to confirm whether they would like to exercise their right to opt out or to receive transaction data covering a shorter time period. This is likely to be the case in particular where the Provider has not had any direct contact with the customer at the time that the account closure is initiated (e.g. when the customer switches their account through CASS).<br><br>In order to avoid customers receiving a full five year Payment Transaction History against their wishes (which is likely to give rise to customer complaints), HSBC would propose extending the time period set out in Article 20.5.1 to 15 Working Days. This ensure that Providers have sufficient time to contact customers, and give sufficient time for customers to respond, before sending out their Payment Transaction History.<br><br>HSBC would therefore propose the following amendment to Article 20.5.1 of the Draft Order:<br><br>"*20.5.1 ~~seven~~ 15 Working Days from the date the customer has closed their account in respect of 95% of account closures in any 12 month period; and*" |
| | **PART 6: AUTOMATIC ENROLMENT INTO A PROGRAMME OF ALERTS** |
| **24.1; 24.2** | <u>Alerts when customers enter into a charge free buffer zone</u><br><br>Article 24.1 of the Draft Order provides that "*Providers shall […] initiate the sending of an Alert to customers enrolled in the Programme of Alerts in respect of the relevant PCA, following an Alert Trigger […]*". Under Article 24.2.1, one of the Alert Triggers is "*the point at which the Provider has information from which it […] knows that the relevant PCA has, at a specific point in time, moved into a position where the customer has exceeded a Pre-agreed credit limit […]*". For PCAs with a single arranged overdraft, 'Pre-agreed credit limit' is defined in Article 9.1 as "*the point at which that arranged overdraft limit is exceeded*". HSBC notes the CMA's view, set out at paragraph 66 of the Draft Explanatory Note, that providing that an Alert only once a 'penalty free buffer' has been exceeded "*would not be consistent with the remedy or the Final Report*".<br><br>HSBC supports the provision of timely and relevant alerts to assist customers in managing their finances. Alerts can prompt customers to take action to ensure that they have funds available to make payments and to avoid unauthorised borrowing. However, providing inappropriate alerts is likely to have unintended consequences, including customer confusion and disengagement.<br><br>Requiring Providers to initiate an Alert when a customer enters their charge free buffer zone is likely to result in such consequences. The following scenarios illustrate this problem. |

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| | • **Scenario 1: a customer's account enters into the charge free buffer zone, then subsequently exceeds this buffer zone.** When the customer's account enters into the charge free buffer zone, the Provider would be required to send an Alert in accordance with Article 24.2.1 of the Draft Order. Under Article 25.1, this Alert would be required to inform the customer that the customer had exceeded a Pre-agreed credit limit. However, the customer would not be required at this stage to take any action to avoid any charges (since their account would be in the charge free buffer zone). If the customer subsequently attempted to make a transaction that would result in their account exceeding the charge free buffer zone, the Provider would not be required to initiate a further Alert (in accordance with the exception set out in Article 24.3.3). The customer would therefore not receive any call to action to avoid the unauthorised overdraft charges. Alternatively, if the Provider voluntarily provided a further Alert in these circumstances, this may appear to contradict the earlier Alert initiated when the customer entered into their charge free buffer zone.<br>• **Scenario 2: a customer's account repeatedly enters into the charge free buffer zone but only rarely exceeds it.** On each occasion that the customer's account enters into the charge free buffer zone, the Provider would be required to send the customer an Alert in accordance with Article 24.2.1 of the Draft Order. However, the customer would not be required to take any action to avoid charges (since their account would be in the charge free buffer zone). If the customer regularly receives such Alerts, which do not require them to take any action, they may become disengaged and either ignore the Alerts or opt out from receiving them. They may then be less likely to take appropriate action in circumstances where this is necessary to avoid unauthorised overdraft charges.<br>In order to address this problem, HSBC recommends that an Alert should only be required under Article 24.2.1 in circumstances where the customer will incur a charge. This would ensure that Alerts are only provided in circumstances where customers need to take action, and would therefore increase the effectiveness of this remedy.<br>HSBC would therefore propose the following amendment to Article 24.2.1 of the Draft Order:<br>"*24.2.1 knows that the relevant PCA has, at a specific point in time, moved into a position where the customer has exceeded a Pre-agreed credit limit and will incur a charge;*" |
| | **PART 8: PUBLICATION OF RATES OF SME LENDING PRODUCTS** |
| **30.1; 31.1; 31.2; 33.2** | <u>Representative APRs</u><br>Under Article 30.1 of the Draft Order, Providers are required to "*continuously publish and display current Rates showing the […] Representative annual percentage rate (APR) for Unsecured Loans to SMEs for borrowing up to a value of £25,000 […]*".<br>'APR' is defined in Article 9.1 as "*the total cost of the credit to the SME customer on* |

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| | *a loan, expressed as an annual percentage of the total amount of credit*".<br><br>HSBC supports the provision of clear and meaningful information to SME customers to enable them to make effective comparisons between lending providers. HSBC also acknowledges that Representative APRs are used for this purpose in the context of consumer credit, as required under the FCA's Consumer Credit Sourcebook (CONC). However, there is a key difference between consumer credit and SME lending that renders Representative APRs less helpful (and potential confusing) in the context of SME lending: it is common for SME lenders to charge an arrangement fee for unsecured business loans.<br><br>Arrangement fees form part of the "*total cost of the credit*" and would therefore need to be taken into account when calculating the Representative APR. However, as a result, the APR will vary for loans with the same fee and interest rate where the loan amount or term is different. For example, a three year loan with a £100 fee and an interest rate of 5% will have a higher APR than a five year loan with a £100 fee and an interest rate of 5%. Similarly, a £1,000 loan with a £100 fee and an interest rate of 5% will have a higher APR than a £2,000 loan with a £100 fee and an interest rate of 5%. This may give rise to confusion for SME customers when attempting to compare the Representative APRs for Unsecured Loans offered by different Providers.<br><br>The CMA appears to recognise this by requiring, in Article 31.1 of the Draft Order, the publication of "*contextual information on how the APR to be published for Unsecured Loans was calculated […]*", including "*the size and term of the loan associated with the Representative APR*". Paragraph 83 of the Draft Explanatory Note explains that the CMA "*decided to require some additional contextual information in addition to the APR/EAR in order to ensure that SMEs viewing the Rates on Providers' webpages are able to understand and compare them.*" However, there is still a risk that SME customers may find the Representative APR confusing when attempting to compare loans between Providers. Customers will not be able to make a direct like-for-like comparison unless the Representative APRs are based on the same loan amount and term.<br><br>A similar issue will arise for customers using the price and eligibility tool, which is required under Article 33.2.1(b) of the Draft Order to show an indicative APR. If these customers subsequently apply for credit of a different amount or term, the APR will not be the same as the one indicated by the tool. This is likely to cause confusion and give rise to customer complaints. This also has implications for the requirement under Article 33.3 of the Draft Order to provide information on "*the proportion of all users using the tool who received an end quote that was the same, better or no more than 10% above the indicative quote […]*". The comparison between the indicative quote and the end quote would only be valid for customers who apply for credit of the same amount and term as entered into the tool. The percentage displayed in accordance with Article 33.3 would therefore need to be calculated solely on the basis of such customers.<br><br>HSBC considers that a better approach would be to require Providers to display the Representative simple annual interest rate, along with any applicable fees (which would include any arrangement fee). The simple annual interest rate would be easily comparable between providers, as it would not vary depending on the loan size or term. The simple interest rate would also be more appropriate than a compound rate, |

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| | as interest is not compounded for Unsecured Loans except in case of default.<br><br>HSBC would therefore propose the following amendments to the Draft Order:<br><br>• Article 9.1: "*'AIR' means the simple annual interest rate.*"<br><br>• Article 30.1.1: "*Representative annual percentage rate ~~(APR)~~ (AIR) for Unsecured Loans to SMEs for borrowing up to a value of £25,000; and*"<br><br>• Article 31.1: "*Providers shall continuously publish and keep up-to-date on their website and in marketing and advertising materials falling within the scope of Article 30.3.3 ~~contextual information on how the APR to be published for Unsecured Loans was calculated and~~ information reflecting any additional charges for Unsecured Loans and standard tariff Business Overdrafts.*"<br><br>• Article 31.2.1: "*For Unsecured Loans:*<br>*(a) the range of loan sizes and terms on offer~~of the loan associated with the Representative APR~~;*<br>*(b) ~~the rate of interest, and~~ whether ~~it~~ the AIR is fixed or variable or both~~, expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down~~;*<br>*(c) the nature and amount of any ~~other~~ charges ~~included in the total charge for~~ associated with the loan~~credit~~;*<br>*(d) the total amount of credit; and*<br>*(e) the total amount repayable.*<br><br>• Article 33.2.1: "*(b) for Unsecured Loans, provide the user with an indicative ~~APR~~ AIR which they consider to be Representative based upon the information submitted by the user; and*<br><br>• Other consequential amendments to the Draft Order and Draft Explanatory Note would also be required. |
| | **PART 9: TOOL OFFERING INDICATIVE PRICE QUOTES AND ELIGIBILITY INDICATOR** |
| **33.2** | <u>Percentage likelihood of eligibility</u><br><br>Under Article 33.2.1(a) of the Draft Order, the price and eligibility tool that Providers are required to offer on their websites is required to "*provide the user with a percentage (%) giving the likelihood of being eligible for a given product at the requested credit limit […]*".<br><br>HSBC supports a requirement to provide an indication to SME customers of their likely eligibility for a given product at the requested credit limit. However, it would be inappropriate and potentially misleading to provide this information in the form of a percentage for a number of reasons:<br><br>• First, without clear rules on how the percentage likelihood of eligibility should be calculated, there would be no consistency between different Providers' methodologies. Comparisons between Providers would be |

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| | meaningless without a consistent approach across the industry. Furthermore, there is currently no requirement under Article 53 of the Draft Order to report on the accuracy of the information provided under Article 33.2.1. It is not even clear how the accuracy of the eligibility percentages could be effectively monitored against actual credit acceptance / rejection decisions. If this cannot be effectively monitored, there would be no means of confirming that Providers are providing accurate information to customers on their likelihood of eligibility.<br>• Second, price and eligibility tools necessarily involve a trade-off between the amount of information that a customer needs to input into the tool and the accuracy of the indicative credit decision. In order to be user-friendly, such tools require significantly less information than a formal credit application. They can therefore only provide an *indication* of eligibility. The data collected would be insufficient to provide customers with an accurate percentage likelihood of eligibility. Providing percentages in these circumstances would be misleading, as it would give a false impression of the accuracy of the eligibility assessment.<br>• Third, even if it were possible to provide customers with an accurate percentage likelihood of eligibility, it is not clear that this would assist them in making comparisons between different providers. A customer would not necessarily be able to understand, for example, whether a 70% likelihood of eligibility is good or not. If customers misinterpret or place inappropriate weight on this percentage, this may lead them to make sub-optimal choices. Ultimately, the lender will either approve or decline the credit application: this is a binary outcome. It would therefore be far more helpful for customers simply to be informed whether their application for credit is likely to be successful or unsuccessful. Any additional information on the percentage likelihood of eligibility is unlikely to be helpful and may cause confusion.<br>HSBC would therefore suggest that the tools should only be required to provide three outcomes in terms of likely eligibility for a given product at the requested credit limit: (a) indicative yes; (b) indicative no; and (c) indication not available. Outcome (c) would be appropriate in cases where the Provider has insufficient data to provide the customer with an indication of their likely eligibility (e.g. due to a lack of credit history). It would also be relatively straightforward to monitor the accuracy of this information provided by the tool against actual acceptance / rejection decisions for subsequent credit applications.<br>HSBC would therefore propose the following amendments to the Draft Order:<br>• Article 33.2.1: "(a) *provide the user with ~~a percentage (%) giving the likelihood of being~~ an indication of whether the user is likely to be eligible for a given product at the requested credit limit (except where insufficient data is available to provide such an indication); and*"<br>• Article 53.1.1: "*(b) information on the accuracy of the information provided to users of the tool in accordance with Article 33.2.1(a), by reference to the outcome of subsequent* |

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| | *applications for credit by these users; and*" |
| **34** | Access to tool by third parties<br><br>Under Article 34.1 of the Draft Order, Providers are required to "*provide access to the price and eligibility tool to at least two Finance Platforms designated under the SBEE Act […] and at least any two comparison sites […]*". Article 34.2 sets out the deadlines for providing this access and Article 34.3 sets out the mechanisms through which access can be provided.<br><br>HSBC fully supports the provision of access of the price and eligibility tool to relevant third parties. However, the Providers will need the cooperation and engagement of the third party Finance Platforms and comparison sites in order to provide access to the tool in accordance with the requirements of Article 34. HSBC is therefore concerned that it is not entirely within the control of the Providers to comply with the requirements under Article 34.<br><br>In order to address this issue, HSBC would suggest amending Article 34 such that Providers are required to use best endeavours to provide access to the price and eligibility tool. This would require Providers to engage with the relevant third parties to provide such access, without placing an obligation on them that they may not be able to achieve due to factors outside their control.<br><br>HSBC would therefore propose the following amendments to the Draft Order:<br><br>• Article 34.1: "*Providers shall use best endeavours to provide access to the price and eligibility tool […]*"<br><br>• Article 34.2: "*Providers shall use best endeavours to provide access to third parties in accordance with Article 34.1 above […]*"<br><br>• Article 34.3: "*In providing access to the tool to third parties under Article 34.1 above, Providers should use best endeavours to either: […]*" |
| | **PART 10: SME BANKING COMPARISON TOOLS** |
| **37** | Provision of customer transaction data<br><br>Under Article 37.1 of the Draft Order, Providers are required to provide "*samples of anonymised BCA customer transaction data reasonably necessary for use by entrants to Nesta […]*". Under Article 37.2, these data samples "*would include at least the types of transaction history data currently available for PCAs through Midata as at 9 August 2016*".<br><br>HSBC is fully committed to supporting the Open Up Challenge, including through the provision of sample transaction data reasonably necessary for the data sandbox process. However, it will be important to ensure that Providers are able to provide this data without breaching their obligations under data protection law. In order to ensure this, HSBC considers that it would helpful to clarify that the data to be provided under Article 37.1 of the Draft Order will be anonymised such that it is no longer personal data for the purposes of the Data Protection Act 1998 (***DPA***).<br><br>Furthermore, the data required by entrants to the Open Up Challenge may not |

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| | correspond to the transaction history data available for PCAs through Midata. HSBC therefore considers that the reference to Midata in Article 37.2 of the Draft Order should be deleted.<br><br>HSBC would therefore propose the following amendments to the Draft Order:<br><br>• Article 37.1: *"Before, during and after the Open Up Challenge Data Sandbox process, Providers shall provide to Nesta samples of ~~anonymised~~ BCA customer transaction data reasonably necessary for use by entrants. Such data shall be anonymised so that it is no longer personal data for the purposes of the DPA. Providers shall provide such data to Nesta in a timeframe and manner reasonably requested by Nesta and approved in advance by the CMA."*<br><br>• Article 37.2: *"Samples of transaction data under Article 37.1 would include ~~at least the types of transaction history data currently available for PCAs through Midata as at 9 August 2016. It will also include~~ details of the ~~other~~ factors which drive the costs of BCAs such as whether transactions are online or over the counter."*<br><br>• Other consequential amendments to the Draft Explanatory Note would also be required. |