

**CMA Retail Banking Market Investigation**  
**Santander UK plc: response to the formal consultation on Draft Remedies Order**

**1 Introduction**

- 1.1 Santander UK plc (**Santander**) welcomes the opportunity via the CMA's formal consultation to comment on the Draft Retail Banking Market Investigation Order 2017 (the **Draft Order**), and accompanying Drafting Notes. Overall we consider that the CMA's remedies package will strengthen competition in the retail banking market for the benefit of consumers.
- 1.2 In this document we provide comments on specific Articles of the Draft Order where we have queries or concerns on its substance, or consider that the drafting could be clarified to ensure the Order is applied consistently across the industry. These represent our key concerns.
- 1.3 We welcome the clarification set out in Article 5 of the Draft Order for exceptions to the application of the Order. ✂

**2 Part 2 – open API standards and data sharing**

- 2.1 To achieve the CMA's objectives under this remedy, the reference information to be made available in accordance with the Read-only Data Standard (Article 12.1.1) should be a sufficiently robust information set that personal and SME customers can compare Providers on a useful variety of metrics.<sup>1</sup> As such, we believe that the location of business centres should be included in the prescribed list since this is a key piece of reference data for businesses, in the same way that customers should have access to branch locations. Alternatively, the Implementation Entity may include this data under part (d) of Article 12.1.1<sup>2</sup> for agreement with the CMA.
- 2.2 As previously noted, the definition of "PCA products" at Article 12.4.1 of the Draft Order includes: "... (f) youth accounts...". As noted in the "Implementation Entity Programme Approach (CMA9)" document,<sup>3</sup> youth accounts have a number of functional restrictions that could pose significant challenges if applying the open API remedy requirements.<sup>4</sup> In particular, youth accounts will complicate the customer consent authentication model which will form part of the open API solution, since parental consent is required for minors.
- 2.3 Whilst further work is required to determine whether these constraining factors are material impediments to the use of open APIs in respect of youth accounts, in terms of balancing already challenging timelines with scope the objective of the remedy could be met, and the vast majority of PCA customers in the UK could reap benefits, without the need for youth accounts to be within the scope of the remedy. These accounts are already within scope for PSD2 changes required to be in place from January 2018 and therefore also including here would be unnecessary.

---

<sup>1</sup> Where 'Provider' is a term defined within the Draft Order Article 9.1

<sup>2</sup> Article 12.1.1(d) "any other reference information reasonably stipulated by the Implementation Trustee and agreed by the CMA"

<sup>3</sup> Submitted to the CMA by Payments UK:  
<http://www.paymentsuk.org.uk/policy/payments-CMA-remedy-phase1/temporary/downloads> .

<sup>4</sup> As defined in the Final Report at paragraph 4.17(e): "Youth accounts: these are typically available to customers between the ages of 7 and 17 years and, depending on customer age, have reduced functionality, for example, no cheque book or overdraft facility."

- 2.4 Additionally, youth accounts are not subject to overdraft or other charges, which can make it difficult for consumers to identify which account would be most suitable. In this regard, we note the Final Report recognised that youth accounts accounted for only 3% of all UK PCAs in 2014.<sup>5</sup> Moreover, a key phase in which customers seek to switch bank accounts is at the *expiration* [italics added] of youth accounts or when they open student account. For the 3% of (youth) accounts holders, the benefits of the open API remedy would be available at this point, rather than during duration of the youth account.
- 2.5 A further issue that we have previously highlighted is the inclusion of credit cards in the scope of the open API remedy. Article 12.4.3 defines “SME lending products” as including: “...(a) Commercial Credit Cards...”. By contrast, Commercial Credit Cards and Charge Cards are excluded from the SME remedies in Parts 8 – 10, as set out in the interpretation of Unsecured Loan in Article 9. The exclusion of credit cards is consistent with the market investigation’s Terms of Reference, which stated that the SME scope extends to “the provision of banking services, which includes, but is not limited to, the provision of business current accounts, overdrafts, general purpose business loans and deposit accounts, but which excludes the provision of other non-lending products such as insurance, merchant acquiring, hedging and foreign exchange” (i.e. excludes credit cards). Credit cards were also excluded from the CMA’s analysis of market shares in general purpose lending.<sup>6</sup>
- 2.6 We do not consider it appropriate for credit cards to be deemed in scope for the open API remedy at this advanced stage. In this regard, we note that credit cards have not been included as in scope in the industry’s document “Implementation Entity Programme Approach (CMA9)” submitted to the CMA.

### 3 Part 3 – service quality indicators

- 3.1 We support the CMA’s steer that Providers should work together to determine survey methodology, sampling technique and questionnaire format<sup>7</sup>, subject to agreement to these proposals by the CMA. This will enable ‘best fit by brand’ sample sizes to be sought, rather than a ‘one size fits all’ approach (which would not have ensured an accurate representation of comparable service quality).
- 3.2 In line with industry views expressed via the BBA working group on service quality, we would still highly recommend the use of an existing survey to deliver the service quality remedy, which should already utilise a tried and tested sampling methodology for each brand.<sup>8</sup> Since the CMA has no objection<sup>9</sup> to the final survey being built on an existing survey, we will take the proposal forward via the relevant BBA working group.
- 3.3 We welcome the revised proposal for survey results to be updated in February and August, rather than in January and July. This gives Providers a more realistic lead time from completion of surveys to publishing results. However, while the publication timescales have been extended, we still have concern surrounding the logistics and cost associated with the updating of paper collateral used in branches, and would welcome further measures to make this aspect more

---

<sup>5</sup> Final report paragraph 4.17(e).

<sup>6</sup> Final Report Table 10.1.

<sup>7</sup> Draft Explanatory Note paragraph 37

<sup>8</sup> An existing survey will likely better support the CMA’s requirements through use of existing customer panel data, rather than relying on any data coming from Providers themselves.

<sup>9</sup> Draft Explanatory Note paragraph 37

manageable and proportionate (such as displaying the required service quality indicators alongside though not necessarily within account literature in the banking hall – noting reference to using a paper-based insert to a leaflet is a practical advancement).

- 3.4 Regarding presentation of the survey results, specifically the ranking of competitors for display and publication, the format must account for instances where there is no statistical difference between competitor survey scores, for example, allowing Providers to occupy a joint second place. This is not explicit in the Draft Order or Draft Explanatory Note as currently written. Further detail on this was provided to the CMA in our email on presentation of service quality indicators to Matt Weighill dated 24 October 2016.

#### **4 Part 4 – prompts**

- 4.1 As we noted in our response to the Provisional Decision on Remedies, Santander would be happy to work with the FCA on trialling prompts.

#### **5 Part 5 – transaction history**

- 5.1 The Draft Order makes clear that transaction history must be provided at account closure unless the customer has opted out (Article 20.1). We would like to reference an email sent to the CMA from the BBA on 18 December 2016, in relation to the remedy being more appropriately implemented via an ‘opt-in’ model than the proposed ‘opt-out’ model. As set out in the BBA’s email, an ‘opt in’ approach will achieve the CMA’s objective, i.e. remove a perceived barrier to switching, in a more proportionate manner, by providing transaction history to those who wish to receive it and so for whom it will genuinely add value. This approach would also better mitigate data security and privacy risks associated with the provision of large amounts of transaction data, where this may not actually be desired by the customer. As evidenced by the BBA letter, the industry is aligned on this.
- 5.2 Notwithstanding the point above in relation to the suitability of the ‘opt-out’ model, the clarification provided by Article 20.3 is helpful, that customers who retain access to the information on an ongoing basis after closure are not also required to be separately provided with the information set at time of closure. We also note the clarification of the term ‘provide’ in this context as making the information available for download by the customer.
- 5.3 In addition, in relation to current CASS processes, as switch outs are initiated by the new bank there is currently no option for the customers switching through CASS to opt out of the provision of transaction history. The CMA has concluded it will not mandate any changes to the CASS process and suggested that Providers work with Bacs directly. We intend to request this is reviewed via the CASS Management Committee.

#### **6 Part 6 - automatic enrolment into a programme of alerts**

- 6.1 Article 25.1.1(c) and 25.1.1(d) of the Draft Order requires Providers to communicate in an alert that the customer “is at significant and imminent risk” of exceeding or incurring charges, as relevant. It would be helpful for the CMA to specify what a ‘significant and imminent risk’ would be to ensure consistency of interpretation across the market, for example if the meaning is in line with the explanation provided by Article 24.2.3.

- 6.2 We welcome the definitions of ‘day’ and ‘month’ as determined within Article 9.2 for clarity, including for Part 6 in relation to timing of alerts.
- 6.3 It remains unclear whether the requirement to set up the alerts within three Working Days for new accounts (Article 23.1), means three days after an account is fully open and authorised (rather than, e.g. from date of application for a new account).
- 6.4 The Draft Explanatory Note for Part 6 contains helpful explanation as to how the alerts remedy is expected to operate. In paragraph 65, however, the CMA directs us to see Article 24.3.5 and there is no corresponding clause in the published Draft Order.
- 6.5 The situation in which to send the Alert as set out in the Draft Explanatory Note<sup>10</sup> is not sufficiently clear in its meaning of “account balance”: “Providers may be aware of transactions that have not yet been included in the account balance that will, in the absence of any payment in (or change in the Pre-agreed credit limit), result in the Pre-agreed credit limit being exceeded”. We believe it is the CMA’s intention for this to mean transactions that have not yet been included in an account’s *available* balance [italics added] including any arranged overdraft, which would clearly set out that it captures those payments taking the account beyond the Pre agreed credit limit.

## **7 Part 7 – Monthly Maximum Charge**

- 7.1 By Article 28.5.2, “Relevant Charges” mean “all charges that could accrue to an account as a result of exceeding or attempting to exceed a Pre-agreed credit limit. This includes but is not limited to:
- (a) interest for the amount borrowed beyond a Pre-agreed credit limit;
  - (b) time-based charges such as monthly, weekly or daily charges;
  - (c) charges associated with allowing a payment due to lack of funds;
  - (d) charges associated with refusing a payment due to lack of funds; and
  - (e) administrative charges other than overdraft control charges.”
- 7.2 We note that the accompanying Draft Explanatory Note (Article 7.4) confirms that the charges to be considered under the MMC do not also include charges that would be incurred for using an arranged overdraft. We consider that Article 28.5.2(b) should be amended to make explicit that it excludes the charges for using the pre-agreed credit limit, which we understand is the CMA’s intention through this remedy.

## **8 Part 8 – publication of rates for SME lending products**

- 8.1 Articles 3.1.5 and 30.1 provide that Part 8 of the Draft Order applies to all Providers of Unsecured Loans and standard tariff Business Overdrafts to SMEs for values up to £25,000. However the Draft Order does not distinguish between regulated lending (loans up to £25,000 under the Consumer Credit Act 1974) and unregulated lending. As previously noted, we consider that only

---

<sup>10</sup> Draft Explanatory Note paragraph 65

products regulated under the CCA 1974 should be included within the remedy requirements, as there are currently (and deliberately) no APR publication requirements for products not caught by that Act. To include unregulated products in the scope of this remedy essentially extends the scope of CCA 1974 and CONC, in effect applying regulation to purposely unregulated lending. We therefore recommend that this is clarified in the Order.

8.2 We also support the CMA's objective in requiring Providers to publish rates for SME lending products to "increase price transparency and enable SMEs to make better comparisons between loan providers"<sup>11</sup>. However, such transparency and comparability is only possible for traditional lending products with standard features.

8.3 ✂

8.4 ✂

8.5 ✂

8.6 Our interpretation is therefore that Part 8 is not intended for such short term flexible finance products where such publication will not deliver increased transparency and comparability of standard SME lending products as envisaged by the CMA. We would be happy to have a call with the CMA to provide further detail on this point if helpful.

## **9 Remaining sections: Parts 9, 10, 11, 12, 13 and 14**

9.1 We have no comments on Part 9 (tools offering indicative price quotes and eligibility indicator); Part 10 (SME banking comparison tools); Part 11 (standardisation of BCA account opening); Part 12 (monitoring and compliance reporting); Part 13 (directions by the CMA as to compliance); or Part 14 (supply of information to the CMA).

## **10 Conclusion**

10.1 We hope that this response is helpful for the CMA in finalising the Order. Please do not hesitate to let us know if you have any questions on any of the issues raised in this response. We do not consent to publication of this response without our prior written consent.

---

<sup>11</sup> Final Report paragraph 16.26