

**DANSKE BANK  
RETAIL BANKING MARKET INVESTIGATION  
RESPONSE TO CONSULTATION ON DRAFT ORDER**

**1. Introduction**

- 1.1. Northern Bank Limited (trading as Danske Bank) (**Danske**) welcomes the opportunity to comment on the Competition and Market Authority's (**CMA**) draft order (**Order**) and accompanying explanatory notes (**Explanatory Notes**) in relation to the market investigation into the supply of retail banking services to personal current account (**PCA**) customers and to small and medium-sized enterprises (**SMEs**) in the UK.
- 1.2. Danske supports the submission of the BBA in relation to the Order and Explanatory Notes. The comments contained in this response are raised in addition to BBA's submission. Danske may wish to make further representations at a later stage in relation to the Order and the Explanatory Notes. Danske would be happy to discuss any of the comments made in this response with the CMA in further detail.
- 1.3. Danske has prepared a marked up version of the Order (attached in the Appendix) which highlights suggested changes. The reasons for any substantive changes proposed in the Order as well as comments and questions are set out below.

**2. Part 1**

- 2.1. In Article 5.8, the words "*subject to the application for determination*" should be deleted as suggested in the Appendix as they are confusing and do not appear to add anything.
- 2.2. We have added definitions for 'Alerts Research Programme', 'BCA Account Opening Steering Group', 'Near Limit Alert', 'Payment Transaction' and 'Retry Alert' which are defined in other parts of the Order.
- 2.3. In the definition of 'Representative', the words "*as a result of the publication, display or communication*" should be deleted as banks will not be aware whether credit is provided to SME customers as a result of the publication, display or communication of the rate or as a result of other factors, e.g. a recommendation from family or friends.
- 2.4. We suggest amending the definition of 'Working Day' as indicated in the Appendix. We believe that the addition of the words "*or other*" is preferable as 'bank holidays' are only those fixed by the Banking and Financial Dealings Act

1971 as days when financial dealings may be suspended. While the term ‘bank holiday’ is often used interchangeably with ‘public holiday’, Christmas Day and Good Friday and, in relation to Northern Ireland, 12 July, are common law public holidays and are therefore strictly speaking not bank holidays. In addition, it has been custom and practice for over 20 years for banks in Northern Ireland to close on the day after the last of the Christmas holidays (i.e. 27 December unless Christmas Day or Boxing Day fall on a week-end).

### **3. Part 2**

- 3.1. Reference to ‘best endeavours’ should be made in Article 11.4.2 as procurement of resources is ultimately outside the control of Providers.
- 3.2. Danske believes that it would be helpful for the CMA to clarify what it means by *“before the application of any negotiated changes”* in the Explanatory Notes.
- 3.3. Danske does not understand the specific reference to ‘credit interest’ in Article 12.1.2(a), particularly as credit interest is also captured in sub-paragraphs (b) and (c).
- 3.4. The Explanatory Notes should include a clarification on what is meant by *“up to date”* data sets.

### **4. Part 3**

- 4.1. Danske notes the reference in Article 15.1 to customers who have *“used the account or a relevant service in a defined period”*. The Explanatory Notes should clarify the meaning of *“used the account”* and *“relevant service”*.
- 4.2. Danske believes that the service quality indicators in Articles 15.1.2 and Articles 15.2.3-5 should be referring to *“or”* rather than *“and”* as indicated in the Appendix. For example, an SME may have used a branch but not a business centre of a bank and would therefore only be able to recommend one but not the other. Equally, an SME may have used both but would only recommend the service it has received in the branch and not the service it has received in the business centre. This could result in the service quality indicators being misleading and distorting the quality of a bank’s services.
- 4.3. Danske believes that it would be reasonable for Article 16.1.1 to include a time period of four weeks within which the CMA has to approve the proposals submitted by Providers. This is because Article 15.4 requires Providers to collect data from 1 July 2017 and Providers will need at least one month in which to implement the survey following approval of the sampling techniques and data collection methods by the CMA.

4.4. Neither the Order nor the Explanatory Notes clarify which Providers Danske will be compared against in the survey and on which basis the decision will be made as to who will be included in the NI survey. It is clearly important for Providers to know the basis on which this decision will be made, and by whom, and this should be set out clearly. In particular, Article 17 should clarify that the service quality indicators relating to Danske will be ranked against and published alongside those of other Brands included in the Northern Ireland survey. In the interests of clarity, while it does not apply to Danske, the Order and/or the Explanatory Notes should also confirm the requirements for Providers who have to publish service quality indicators for both Great Britain and Northern Ireland.

## 5. Part 4

5.1. In light of the onerous obligations imposed on Providers by the Order, Article 18.2.8 should include a reasonable requirement on the FCA requesting further information.

## 6. Part 5

6.1. Danske suggests that the words “*in any 12 months period*” should be added to Article 21.4.1 in order to clarify the obligation imposed on Providers.

## 7. Part 6

7.1. We have added the words “*and will incur a charge*” to the end of Article 24.2.1 in order to bring it in line with Article 24.2.2.

7.2. Danske believes that the definition of ‘Near Limit Alert’ in Article 24.7.4 is not sufficiently clear. This is because the low balance threshold agreed by a customer can be significantly above the Pre-Agreed Credit Limit. We therefore suggest deleting the reference to a low balance threshold agreed by a customer. In addition, the Order and/or the Explanatory Notes should clarify what circumstances the CMA considers to amount to “*approaching a Pre-Agreed Credit Limit*”.

7.3. Article 25.1.1 refers to “*significant and imminent risk*”. In order to ensure a consistent interpretation of the Order, the Explanatory Notes should clarify what is meant by “*significant and imminent risk*”. For example, should ‘significant’ be interpreted relative to the size of the overdraft? Does ‘imminent’ refer to a specific time period?

7.4. Article 26.1.2(b) requires Providers to make all customers aware that the refusal to provide a mobile phone number means that the customer will not be enrolled in the Programme of Alerts. This obligation should be limited to new customers as it is unclear how Providers are expected to contact existing customers for

which they do not have a mobile phone number, or who explicitly refused to provide a mobile phone number, to tell them that this means that they will not be enrolled in the Programme of Alerts. Such an obligation would be unnecessarily onerous as it could lead to Providers having to mail thousands of customers.

- 7.5. In light of the onerous obligations imposed on Providers by the Order, Article 27.2.8 should include a reasonable requirement on the FCA requesting further information.

## 8. Part 7

- 8.1. Article 29.2 imposes an obligation on Providers to *“use the standardised term and definition of MMC as set out in Schedule 2 in any communication which refers to the MMC”*. Article 29.1 states that Providers shall disclose the level of MMC each time information relating to Relevant Charges is disclosed.

- 8.2. Danske believes that it is overly onerous to include the standard wording in Schedule 2 in every communication which refers to the MMC. This could lead to communications becoming overly long and could risk crowding-out other important messages. We suggest including the standard wording in marketing materials but not in account specific communications such as fee prenotifications or annual summaries.

- 8.3. Alternatively, if the CMA retains the requirement for the standard wording to be included in all communications which refer to the MMC, Danske believes that it would be helpful for the standard wording set out in Schedule 2 of the Order to vary depending on the context in which it is used. For example, while Danske considers the wording in Schedule 2 appropriate for a Provider’s website, a more personalised statement may be more suitable for a bank statement/fee note sent to customers. Such alternative wording could, for example, begin with the words *“This cap sets a monthly maximum charge for...”*. The rest of the wording could remain the same as in Schedule 2.

## 9. Part 8

- 9.1. Paragraph 84 of the Explanatory Notes states that the requirement to make data available to Third Parties is separate to the requirement for certain providers to release product and reference data under Article 12. However, Article 32.2 states that Providers who are in scope of Part 2 shall release the data to Third Parties pursuant to Article 32.1 in accordance with the Read-only Data Standard. This raises significant concerns as, as far as Danske is aware, the Open Banking Implementation Entity (**OBIE**) is not currently providing for capture of EARs in the API for overdrafts referred to in Article 30.1.2 nor is the OBIE providing for capture of the contextual information referred to in Article 31.2.1 and 31.2.2 in any of the APIs.

- 9.2. We note that paragraph 85 of the Explanatory Notes states that the product specification information to be made available under Article 12 is “*almost identical*” to the information required to be released to Third Parties under Article 32.1. It is important to note that slight changes in the information requirements are significant from a technical perspective when mapping the data.
- 9.3. In order for Providers to be able to implement Article 32, it is important that a data standard for the publication of the data referred to in Articles 30.1.2, 31.2.1 and 31.2.2 is mapped out. In light of the above, Danske does not believe that it is realistic to implement this remedy within 6 months of the Order. Please note that we have not been able to clarify these issues with the OBIE within the short time period for response.

## **10. Part 10**

- 10.1. Danske notes the wording in Articles 39.1.1 and 40.1.1 that Providers will “*release*” data in accordance with the Read-only Data Standard to two or more Finance Platforms designated under the SBEE Act and to two or more comparison tools. Danske’s understanding is that the data will not be directly released to the Finance Platforms and comparison tools but that the relevant data will generally be made available as part of the Open API. If this is correct, Danske suggests that the wording in the Articles 39.1.1 and 40.1.1 should be changed to “*make available*” rather than “*release*” and/or that the Explanatory Notes clarify that these remedies will be met by Providers where the relevant data is made available through the Open API.
- 10.2. Danske notes that obligations in Article 39.1.2, 40.1.2 and 41.7.2 to display hyperlinks of the Finance Platforms and comparison tools on which its products are listed. Danske does not in principle object to the publication of such hyperlinks on its website. However, on the basis of Danske’s understanding as set out in paragraph 10.1 above, Providers will not know which of the Finance Platforms and comparison tools will list their products. This is outside the control of Providers and may change from day to day. For this reason, Articles 39.1.2, 40.1.2 and 41.7.2 should be deleted in their entirety.
- 10.3. Danske believes that the time periods provided for in Article 41 are very short. We do not believe that the CMA should be limiting its discretion to grant an extension of only 6 months in Article 41.2 as the development of a safeguard remedy may throw up technological issues which cannot be resolved in the time period despite the best efforts of the Providers.

## **11. Part 12**

- 11.1. We assume that Articles 45.1.2 and 45.2.3 (c) and (d) should, similarly to subparagraphs (a) and (b) contain references to Basic Bank Accounts. In addition, we assume that references to PCAs and BCAs in Article 45.2.3 should be to Active PCAs and BCAs.
- 11.2. The compliance report requirements regarding Part 6 are very onerous. It is important that Providers know exactly what they are expected to report on. For example, Article 50.3.3(d) refers to *“effectiveness measures, such as the percentage of accounts receiving an Alert for which charges were not subsequently applied”*. It is unclear how the effectiveness of the Alert will be measured and this should be clarified. For example, if an overdraft alert is sent and no fee is applied within a period of 2 days from the date of the alert but a fee is accrued 3-5 days after the alert is sent, would this be included in the percentage of accounts receiving an alert for which charges were not subsequently applied? Danske suggests that the effectiveness measure should be measured by reference to a specific period, for example, no charges relating to the Alert Trigger were applied in the calendar month in which the Alert Trigger occurred.
- 11.3. The compliance report requirements regarding Part 10 include an obligation in Article 54.1.1(b), (c) and (d) relating to the Finance Platforms and comparison tools on which Providers’ products are listed. As noted in paragraphs 10.1 and 10.2 above, Providers will not know on which Finance Platforms and comparison tools its products are listed and, even if they did, this information is subject to change, i.e. a comparison tool may list Danske’s products in one month or week but may decide not to list that product in the following month or week. For this reason, Article 54.1.1(b), (c) and (d) should also be deleted.
- 11.4. If the CMA decides to retain Article 54.1.1(b), (c) and (d), the wording in Article 54.1 will nonetheless have to be amended. Article 54.1 currently states that a Compliance Report must be submitted within one month of Part 10 coming into force and thereafter on every 1 February. The first Articles of Part 10 come into force the day after the Order is made while others come into force at a later date. This would mean that the first Compliance Report will be due in March 2017. It is unclear from the current wording in Article 54.1 whether any further Compliance Reports in relation to other articles coming into force between March 2017 and 1 February 2018 will become due within 1 month or whether they will become due on 1 February 2018. The wording should be clarified in line with, for example, Article 50.1.

## 12. Explanatory Notes

- 12.1. Paragraph 29 of the Explanatory Notes states that *“Providers are required to publish rates on an ongoing basis...”*. We are unclear why reference is made specifically to *“rates”* rather than more generally to *“information”*.
- 12.2. Danske remains unclear on the explanation of *“additional arranged overdrafts”* contained in paragraph 59 of the Explanatory Notes and requests that this is clarified further.
- 12.3. In paragraph 60, the last sentence should be corrected to read *“Finally, Article 27 provides a requirement on Providers to cooperate in the FCA alerts research in terms similar to those of Article 18”*.
- 12.4. The wording in paragraph 66 does not align with the wording in Article 24.2. This is because Article 24.2 defines an Alert Trigger as the point at which a customer has exceeded/attempted to exceed a Pre-Agreed Credit Limit **and** will incur a charge. In other words, if a customer has exceeded a Pre-Agreed Credit Limit but will not incur a charge due to the fact that the Provider has set an internal buffer within which no charges will be levied, the Alert Trigger is not activated. However, paragraph 66 states that *“[w]hile such buffers are welcomed customer should know as soon as they are using their buffer rather than wait until it is has been exceeded”*. This is clearly at odds with the wording in Article 24.2 and we therefore suggest that paragraph 66 if reworded or deleted.
- 12.5. Paragraph 70 contains a reference to Article 24.4.2 which is incorrect.
- 12.6. Danske believes that Figures 1 and 2 of Schedule 2 in the Explanatory Notes should include a reference to the time period to which the survey data relates. This could be included at the bottom of the page alongside the Sample size information.

**Danske Bank**  
**20 December 2016**