CMA RETAIL BANKING INVESTIGATION

RBS RESPONSE TO FORMAL CONSULTATION ON DRAFT ORDER

22 DECEMBER 2016

Introductory Comments

1. This submission sets out the views of The Royal Bank of Scotland Group plc (**RBS**) in response to the Competition and Markets Authority's (**CMA**) formal consultation on the draft Retail Banking Market Investigation Order 2017 (**Draft Order**) and the accompanying explanatory note (**Explanatory Note**), following the CMA's informal consultation on previous versions of the Draft Order and accompanying Drafting Notes which RBS responded to on 31 October 2016.

2. Section A below sets out a number of general comments regarding the Draft Order and Explanatory Note. The subsequent sections from Section B onwards set out specific comments on each Part of the Draft Order.

Section A: General Comments

3. The Draft Order refers in a number of places to "standard tariff Business Overdrafts" however it is unclear whether this includes unsecured overdrafts only. In RBS' view, this would be the correct interpretation. ✂ In addition, "standard tariff" is not defined – further clarification is needed to ensure Providers interpret this consistently.

4. As set out in Section M below, RBS would welcome the opportunity to comment on the draft templates and online form to be used for compliance reports before the Order is finalised. RBS' understanding is that the CMA had intended to disclose these in the formal consultation, but as yet these have not been provided.

5. RBS notes that the Draft Order still contains a number of references to the term "continuously". In RBS' previous response of 31 October 2016, RBS requested clarification on the use of the word "continuously" and RBS welcomes the additional information provided in the Explanatory Note at paragraphs 29 (for Articles 12 to 14), 77 (for Articles 30.1 and 31.1), and 89 (for Article 33.1).

6. However, similar guidance has not been provided for Articles 41.8.1 and 53.1.1(b) – RBS would welcome clarification in the Explanatory Note as to what is required for it to make certain information "continuously available".

7. Accompanying this submission are “marked-up” copies of the Draft Order and Explanatory Note which contain suggested drafting amendments as well as certain requests for clarification from RBS. When reviewing this covering response, RBS requests that the CMA also cross refers to the relevant sections of the marked up Draft Order and Explanatory Note, which are attached at **Appendix 1** and **Appendix 2** respectively.

Section B: Part 1 of the Draft Order

8. <u>Article 5 – Exceptions to the order</u>

9. As requested by the CMA, the following comments summarise and expand upon the points raised by RBS and Coutts on a call with the CMA on 14 December 2016 regarding the availability of the private banking exception to Coutts and Adam & Co (**Adam**).

10. The previous version of the Draft Order reviewed by RBS contained an exception for private banking, which was in line with the CMA's intentions in the Final Report. For the reasons set out in RBS' response on 31 October 2016 and earlier response from Coutts and Adam of 29 September 2016 to questions from the CMA on private banking, RBS believes that Coutts and Adam should be excluded from the scope of the CMA's proposed remedies as a whole, as they are clearly separate brands offering private banking services which are distinct from mainstream retail banking services.

11. However, RBS notes that there have been significant changes to Article 5 in the latest version of the Draft Order and it is now less clear whether Coutts and Adam could benefit from the exception for the Draft Order in full.

12. It is clear from the Draft Order that it will not apply to the provision of PCA products to certain "Specified Individuals" under Article 5.1.1, or where a PCA provider applies for a determination under Article 5.2 (on the basis that it provides PCAs alongside specialist or private banking services and should therefore be exempt). RBS' view, having considered the criteria in Article 5.4, is that Coutts and Adam will meet those criteria in support of a determination application under Article 5.2 (subject to applying to the CMA for a determination).

13. However, BCAs are not covered to the same extent and the CMA has specifically stated that "*The justification for excluding the application of PCA provisions for such customers does not apply to the extent that BCA products are provided by the same Brand or division*" (paragraph 19 of the Explanatory Note).

14. RBS has specific concerns as it considers that, as private banks, Coutts and Adam should be exempt from the BCA/SME remedies on the same basis as they are expected to be exempt from the PCA remedies. In addition, it should be emphasised that the CMA's market investigation did not consider private banking and the CMA did not request information from Coutts and Adam until after publication of its Final Report. Therefore the CMA will not have been able to properly consider whether the adverse effects on competition that it found will be present in the private banking sector, and therefore whether its proposed remedies could be appropriate for private banking customers. Indeed the Final Report set out justification as to why the remedies should not apply to private banks for proportionality reasons [1] and RBS considers these are relevant for both the PCA and BCA/Commercial activities of Coutts and Adam.

15. As set out in paragraphs 17-19 of RBS' response of 31 October 2016, Coutts and Adam operate separately from the wider RBS group and, but for the fact they are part of the RBS group, they operate in a similar manner to other independent private banks. They can also be distinguished from other smaller SME providers due to the importance of relationships to the personal aspects of the private banking business model and given the fact that Coutts and Adam ✂.

16. Coutts and Adam have approximately ✂ BCAs overall (of which only a subset will be active BCAs). For some BCA/Commercial customers, they began as individual personal private banking customers of Coutts/Adam and were offered BCAs by virtue of their existing personal banking relationship. SME customers will have particular reasons to bank with Coutts and Adam (e.g. because of the relationship management or sector specific services offered). There are specific types of customer who will choose Coutts/Adam and they will have certain types of borrowing needs, which will be different to 'mainstream' retail banking. For example, business clients will choose to bank with Coutts/Adam to benefit from:

[1] See paragraphs 12.13 – 12.17 of Retail Banking Market Investigation: Final Report dated 9 August 2016.

- The ability to negotiate commercial agreements. Many of Coutts and Adam's unsecure commercial overdraft and loan agreements are negotiated with individual businesses resulting in bespoke terms and rates dependent upon the client concerned;

- The relationship led service offered by Coutts and Adam. The unique nature of this relationship is reflected in the premium that Coutts and Adam clients pay the bank; and

- Coutts and Adam's sector expertise, for example, Coutts and Adam are particularly well respected in the media sector; for that reason clients are willing to pay a premium for the banking relationship to benefit from the industry expertise of specialist relationship management teams.

17. SME banking is also complementary to Coutts and Adam's private banking offering, in fact Coutts is confident that the SME business would not operate on a standalone basis – the private banking element is necessary. In the case of Adam, only commercial clients with an existing private banking relationship can be onboarded.

18. Coutts and Adam's typical SME customers have turnover of £5-50m. When you consider the number of SME remedies that will apply only to SMEs with turnover below £6.5m, the majority of Coutts and Adam's customer base falls outside that, therefore the remedies are only relevant to a very small proportion of that customer base Similarly, some of the SME remedies only apply in relation to unsecured loans and overdrafts below £25,000. The vast majority of Coutts and Adam customers seek, and currently hold, unsecured credit above this £25,000 threshold.[2]

19. In light of this, it is therefore very questionable whether Coutts and Adam's customers would benefit from the SME remedies. For example, if SMEs were to use the loan eligibility tool proposed by the CMA, the representative APR for Coutts would only be a part of the costs that a customer would pay for a loan or overdraft as Coutts and Adam customers will also pay for other aspects of their banking relationship (the account fee detailed at paragraph 16 above), so a SME could not obtain a like for like comparison. A SME customer using loan eligibility tools across a number of mainstream retail banking providers (including smaller SME providers) to shop around would not be able to obtain a like-for-like comparison from Coutts or Adam as the results would not be comparable with Coutts and Adam especially as all Coutts and Adam Commercial customers are offered tailored and bespoke packages, so the eventual rate offered will be personalised one rather than being based on more standard rates which mainstream retail banks will tend to apply.

20. Requiring Coutts and Adam to implement the SME remedies would therefore be disproportionate given that it is unclear whether their existing or potential customers would benefit. Coutts has also conducted some preliminary assessments of the requirements of the remedies when it comes to the costs for implementing these, should the CMA adopt the current approach. It estimates that it would cost ✂ to implement the SME remedies alone. It should be noted this estimate does not take account of other implementing other remedies, most notably Open Banking/API and the other Foundation, CASS and PCA based remedies.

21. As Coutts previously explained to the CMA, there are no efficiencies to be achieved from RBS implementing the remedies. Coutts and the wider RBS group operate separately and use different technology systems, so Coutts would need to make any technology changes from scratch. For example, creating a Coutts/Adam loan price eligibility tool would cost ✂, mainly due to the standalone IT development needed. Coutts/Adam are one of two private banks in UK who use a specialist private banking technology platform ✂. This contributes significantly to the cost of implementing the remedies and again emphasises how given the operational separation of Coutts and Adam to the rest of the RBS group, this creates a significant burden on Coutts and Adam, in

[2] ✂

comparison to independent private banks and SME providers who operate outside of the banking group.

22. RBS therefore proposes that the CMA amend Article 5.3 to read "*Where the CMA has made the determination, the Order shall not apply to that division or Brand if it has fewer than 150,000 active PCAs in GB and NI combined and has fewer than 20,000 active BCAs in GB and NI combined*", and amend Article 5.4 so that it also applies to BCAs. RBS would also ask that the CMA provide clarification regarding the determination process under Article 5 both for private banking and in relation to closed accounts, including the timings for this process, including what would happen in the event an application for determination was unsuccessful.

23. Whilst RBS feels strongly that the above approach is most appropriate, alternatively the CMA should refocus Articles 5.5 to 5.9 to allow for an exemption for on sale products in addition to closed products, where a Brand has fewer than 20,000 active BCAs. It should be noted that Coutts and Adam are unable to benefit from the de minimis exemptions (other than for Part 3) as these are set at Provider rather than Brand level – smaller SME providers will not have the same issue, which places Coutts and Adam in an unusual position. Allowing an exemption for Brands with fewer than 20,000 active BCAs in relation to on sale products would therefore remedy this issue and ensure Coutts and Adam are not included within the scope of the remedies merely by virtue of their being part of the wider RBS group (the same may also be true for other Brands that are part of larger banking groups).

24. RBS also notes that Article 5.4.8 currently captures the distinction between 'mainstream' PCAs and those offered by private banks. The CMA should make the same distinction for BCAs and include an equivalent set of criteria in the Order accordingly.

Article 6 - Derogation

25. RBS requests that the CMA provide further details and guidance on the evidence that the CMA will require Providers to submit as part of an application for derogation under Article 6. For example, should the application include specific details of why a Provider will be unable to implement a programme of alerts, such as system constraints and the estimated time and cost involved in setting up such a programme? RBS would also appreciate an explanation of how the CMA expects to assess applications.

Section C: Part 2 - Open API standards and data sharing

26. RBS has a concern about the consistency between Part 2 and other remedies relating to SME banking. Article 12.4.3 defines SME lending products for the basis of Article 12; however there is no reference as to what value of lending such products cover. This is inconsistent with Part 8 which states that SME lending products are those up to a value of £25,000. RBS therefore requests confirmation from the CMA that the £25,000 limit also applies to SME lending products under Article 12.

27. RBS also has a concern about the interaction, and apparent inconsistencies, between the requirements of Part 2 and Part 8, namely RBS notes that Part 8 limits the information that need to be displayed for borrowing limited to £25,000. However, the same exception is not placed in Part 2. Without this limit, there is a risk that more products will be covered than were within the CMA's original Terms of Reference. This in turn would bring larger businesses into the scope of the Draft Order, leading to more complexities for RBS. Therefore, RBS requests that the CMA amend Part 2 so that it is aligned to the £25,000 borrowing limit in Part 8.

28. The definition of "BCA Products" in Article 12.4.2(b) makes reference to "Business Overdrafts" but gives no indication as to whether it covers unsecured overdrafts only. If secured overdrafts are

included within the definition of BCA Products, this would introduce significant complexities (such as the fact that secured overdrafts will have negotiated rates) and would mean RBS would be unable to comply with the requirements of Part 2 within the relevant timescales. Therefore, RBS currently assumes that this remedy will not apply to secured overdrafts, but seeks clarification from the CMA that this provision will only apply to unsecured overdrafts.

29. RBS notes that the funding requirements for the Implementation Entity are set out in paragraphs 8 and 9 of the Agreed Arrangements, at Part A of Schedule 1 to the Explanatory Note. However, whilst the Agreed Arrangements provide for a forecast review of funding every 3 months, it is unclear whether there is an overall limit or other control which would limit the overall funding required from the banks concerned and/or the time period for which they are committed to provide funding.

30. Article 12 sets out the information that must be made available by RBS through the Read-only Data Standard, including the benefits of a product (under Article 12.1.2(c)). RBS recommends that this be amended to cover both "features" and "benefits", as use of the term "benefits" alone could make the determination of the information required quite subjective For example, the term "benefits" includes things such as reward and packaged account benefits (such as free breakdown cover and travel insurance) whereas the term "features" could include overdraft facilities, contactless debit cards and mobile banking. Further, a "feature" would be no charge for early repayment, whereas a "benefit" would be the flexibility that this creates for the customer to make partial or full repayments without penalty. By not having a reference to "features", this may mean certain information is not included.

Section D: Part 3 – Service Quality Indicators

31. RBS has a concern about the lack of oversight and governance processes for Part 3, which is inconsistent with other remedies. RBS notes that there is no process highlighted in either the Draft Order or Explanatory Note as to how the collection of information under Part 3 for the purpose of collecting service quality indicators will be governed. In contrast, RBS notes that the remedy under Part 2 (Open API standards and data sharing) sets out the process for how the information released under this remedy is overseen by the Implementation Entity. Without such oversight for Part 3, there will be no process to oversee how the surveys are carried out or to allow for changes e.g. if the surveys are undertaken to an unsatisfactory standard. RBS therefore requests that the CMA to amend this provision to ensure that there is a governance procedure in place for this remedy.

32. Under Article 16.1 Providers must submit a proposal to the CMA by 1 May 2017 for the basis and methodology for collection of service quality information. RBS accepts that this is a suitable date for proposals to be put forward to the CMA. However, RBS has concerns with the date by which Providers should start collecting the service quality information. Under Article 15.4 Providers must begin collecting this information from 1 July 2017 (i.e. only two months after submitting a proposal to the CMA). RBS considers that two months will not be sufficient time for the CMA to approve the proposals and for Providers to then make the necessary arrangements, including security and data requirements, to begin conducting a new survey on 1 July 2017. For example, the supplier selection process with the BBA may not be completed until the end of February 2017, and the supplier must be selected before work can begin on contracts and security testing (including penetration testing and the creation of secure data links), which has previously taken up to six months.

33. RBS understands this issue has also been raised by a number of other Providers through the BBA, and therefore asks that the CMA amend these provisions so that Providers are required to submit their proposals by 1 May 2017 and begin conducting surveys by 1 Sept 2017. This would ensure that Providers are given sufficient time to conduct the necessary preparatory work (including with the BBA and selected supplier) to ensure that survey collection method is verified to be suitable and secure, before Providers are required to begin conducting surveys.

34. Article 17.1.3 provides that the service quality indicators should be provided no more than "one click away" from the Brand's GB or NI website home page and two steps from the primary mobile banking app screen. RBS considers the CMA may want to avoid being overly prescriptive in setting these requirements and believes it would be preferable for providers to be able to determine where this information is published based on the customer journey. Customers may not always visit a brand home page or mobile app in (for example where they view a product on a price comparison website they will often not be directed to the brand website/the one click away page). Another alternative would be for providers to be required to publish the indicators prominently or in a manner which is easily accessible for customers.

35. RBS also notes that amount of information that it will be required to publish on its website could be quite voluminous and the cumulative effect could become confusing for consumers – in addition to Article 17.1.3, the information to be displayed prominently under Articles 33.1, 39.1.2, 40.1.2 and 41.7.2 must also be no more than one click away from the business banking homepage. RBS would therefore welcome clarification of how it should evidence compliance with this requirement as there is a risk that it could be misinterpreted. For example, will it be sufficient for RBS to include hyperlinks to more detailed information, rather than displaying each individual piece of information displayed on the page?

36. With regards to the information that RBS will be required to publish under Article 17.2, this includes certain types of information which will only be available once the data from all Brands has been collated (i.e. details of each Brand's rank and the top five Brands). RBS suggests that providing the metric of the individual provider is sufficient and would question the benefit of ranking system against the top five Brands. RBS also requests clarification from the CMA as to how the information will be collected, analysed and distributed to each Brand, including the timescales envisaged to ensure that Brands are still able to comply with the relevant deadlines.

37. Part 3 appears to be silent as to the turnover threshold for SMEs for whom service quality information should be collected. RBS notes that the CMA has proposed that Parts 2, 4, 5 and 11 will only apply to SMEs with turnover below £6.5 million. It would therefore be logical for the CMA to explicitly align the requirements of Part 3 so that they are consistent with the majority of the other remedies that apply to SME banking. In particular, RBS has found that the service quality indicators for smaller SME customers (e.g. £50,000 turnover) are significantly different to those with turnover of £25 million, particularly in relation to online and branch services. Therefore, by not aligning Part 3 with the rest of the Draft Order, it could lead a distorted view of whether a customer would recommend certain elements of the Brand to others given that customers above the £6.5 million threshold are likely to have different expectations and needs.

38. RBS notes that the CMA considers (at paragraph 37 of the Explanatory Note) that it has concerns about the use of online surveys but has not entirely ruled out using them. Whilst online surveys alone may not deliver a representative result for the whole of the customer population (particularly for certain types of customers e.g. branch users) the use of online surveys can ensure that the views of certain customers are included, in particular Online and Mobile Banking users. By using one sole method to collect data, the risk is that the results collected will not be a representative view of all customers. Therefore, RBS recommends that the CMA consider allowing the use of a mixed approach of traditional and online surveys to collect the information required for Part 3. However, RBS acknowledges that any online surveys would also need to be conducted to a sufficient standard to meet the privacy and security standards of Providers.

39. Finally, RBS reiterates its previous comments (see paragraphs 32 and 33 of RBS' response of 31 October 2016) regarding the need for service quality information to be displayed in leaflets. ✂. One of the key drivers for this is ensuring that information that RBS shares with customers is up to date, as printed literature quickly becomes obsolete and changes to print take significant time and money.

RBS therefore has concerns about introducing new leaflets containing service quality information when it is reducing its use of leaflets, as well as the potential for outdated information to be shared with customers in error. As set out in RBS' previous comments, the CMA should look to future proof this requirement so that Providers are able to comply in future, taking account of increasing use of digital forms of communication.

Section E: Part 4: Prompts

40. In relation to Article 18.2, RBS would welcome clarification from the CMA as to what "related purposes" means – RBS considers that it should be clear that the FCA may only make reasonable directions to the Selected Prompts Providers where these fall wholly within the Prompts Research Programme.

41. Further, Article 18.2.3 requires Providers to implement changes to IT and other systems in line with the FCA's requirements as necessary to deliver Alerts for the purpose of the Prompts Research Programme. However, and whilst RBS is willing to support the FCA's research, RBS has reservations that any rushed changes to its systems could impact day to day matters and may not be achievable without impacting systems resilience, particularly where RBS is in the midst of a change freeze or implementing other mandatory requirements which are incompatible. RBS would therefore suggest that Article 18.2.3 be caveated so that Selected Prompts Providers are only required to make changes to their systems where this will not adversely impact the performance and resilience of their systems.

Section F: Part 5 – Transaction History

42. RBS welcomes the clarification at paragraph 53 of the Explanatory Note that transaction histories are to be provided at account level rather than customer level. This is consistent with RBS' previous comments (see paragraph 46 of RBS' response of 31 October 2016).

43. As RBS has noted previously, it continues to consider that an opt in approach would be more appropriate for this remedy.[3]

44. RBS notes that it will be required to provide transaction histories within seven working days of account closure or customer request for 95% of cases. ✂. This could present challenges for example where additional time is needed because the customer has changed their address and this must be verified, or where the transaction history must be sent by post with receipt confirmed is e.g. two days after posting. Therefore, RBS suggests that this provision is amended to 10 working days rather than 7 working days.

45. Providers will require clarity on the following points before being able to implement this remedy:

- Article 20.3.1 exempts Providers from having to provide transaction histories where the customer retains access to the information after account closure. RBS would appreciate clarity as to what scenarios the CMA envisages Article 20.3.1 covering. For example, RBS considers that this should include a conversion scenario, where the customer retains access to their transaction history where they change account type but are still banked with RBS on the same customer identification number;

- Will Providers be required to provide transaction histories under Article 21 where the account was closed due to fraud, impairment or the account being dormant? It

[3] See comments on page 15 of RBS response to Provisional Decision on Remedies dated 7 June 2016

would be helpful and consistent if Article 21 could be amended so that the exemptions under Article 20.3.2 will also apply; and

- Under Article 21.3 Providers may charge customers a fee no greater than would be payable for a subject access request made under section 7 of the Data Protection Act. Will this apply equally to any requirements under the General Data Protection Regulation (**GDPR**) once implemented? If so, Article 21.3 should be amended to reflect this.

46. As a general comment, RBS notes that there is inconsistent use of the terms "the", "its" and "their account" in Articles 20 and 21. For the sake of clarity, RBS recommends amending these provisions so that they refer consistently to one of these terms throughout Articles 20 and 21.

47. RBS notes that paragraph 53 of the Explanatory Note provides an explanation of the type of Payment Transaction History to be provided for the purposes of Article 20. The example given in the Explanatory Note explains that where a customer moves from a youth account to a full account, only information in respect of the closed account needs to be provided, which in this scenario would be the youth account. However, in the example given the account itself has not changed as the account number will remain the same, only the product features will change. In the example in paragraph 53, RBS would therefore be able to provide information which covers the different products provided to the customer over the five year period e.g. if the customer later requested their transaction history. RBS considers that the same should be true for other Providers where account numbers are unchanged. RBS would therefore welcome clarification from the CMA as to whether Providers would be expected to provide the Payment Transaction History for multiple products which a customer has had in the last five years.

48. Paragraph 56 of the Explanatory Note explains that Article 21 of the Draft Order is intended to align with Section 7 of the Data Protection Act 1998 (**DPA**). The example given to reflect this states that if a customer asked for their transaction history three years after their account closed, RBS would only be required to provide the last two years of transactions before the account closed. However, Article 21 does not make this exception as clear as paragraph 56 of the Draft Explanatory Note. Therefore, RBS would recommend the CMA transfer the wording set out in paragraph 56 into Article 21 of the Draft Order so the alignment with the DPA is clear.

Section G: Part 6 - Automatic enrolment into unarranged overdraft alerts

49. RBS notes that at paragraph 63 of the Explanatory Note the CMA has offered to hold discussions with Providers to consider whether their program of alerts meets the requirements of Article 23.2.3 and 23.2.4. RBS would find this beneficial and will contact the CMA separately to arrange a discussion.

50. In its previous response of 31 October 2016, RBS recommended that the CMA amended the use of the term "received" in Article 24.3 (now Article 24.4) to "sent" as Providers would not be able to confirm if alerts had been "received" in all circumstances. RBS notes that this has now been amended to "capable of being received", which is a useful change although it is unclear how this could be interpreted – whilst paragraph 68 of the Explanatory Note explains that "capable of being received" means that Providers should take steps to remove delays in a customer receiving an alert, RBS would ask the CMA to provide examples as to what steps Providers should take in order to prevent such delay.

51. RBS notes that Article 26.1 of the Draft Order requires Providers to use reasonable endeavours to collect customers' mobile phone information at account opening and each time a customer changes their contact details, and that this requirement will now be in force from the day after the Order is

made. As stated in its previous response of 31 October 2016, RBS notes that this expands on the original scope of the requirements. RBS is already strongly incentivised to collect mobile phone numbers and does have processes in place to request mobile phone numbers, for example at account opening, at various points during the product lifecycle (including when customers change their details), and initiatives such as peer to peer payments which is done using mobile numbers (through Paym), although these fields are not mandatory for customers to complete.

52. Consistent with its mobile-led strategy, RBS therefore already has measures in place to request mobile phone numbers and considers that these meet the “reasonable endeavours” requirement in Article 26.1. ✂.

Section H: Part 7 – Monthly Maximum Charge

53. Article 29.1 requires disclosure of the level of the MMC each time information relating to Relevant Charges is disclosed. Paragraph 75 of the Explanatory Note then states that "*it is only where overdraft charges incur a charge that would be included in the MMC that the MMC needs to be disclosed*". This requires clarification – does the CMA mean that the MMC is only triggered when a Relevant Charge is incurred. If that is correct, this requirement would only be triggered in Alerts and service communications about the charges incurred whereas Article 29.2 assumes that there will be other promotional communications that will reference the level of MMC and its description prescribed by Schedule 2.

Section I: Part 8 - Publication of rates for SME lending products

54. Please see RBS' comments in Section C above in relation to the inconsistencies between Parts 2 and 8.

55. Similar to RBS' comments at paragraph 28 above, RBS requires clarification that the reference to ✂.

56. Paragraph 78 of the Explanatory Note requires Providers to display the representative APR for borrowing up to a value of £25,000 for individual loans and overdrafts rather than total borrowing. RBS reiterates its previous comments (see paragraph 61 of RBS' response of 31 October 2016) that the £25,000 threshold should refer to "total business debt value". This is because customers with total business debt in excess of £25,000 are likely to receive a tailored rate as part of their funding package. Customers who have individual loans of up to £25,000 may also have additional lending products (which may be in excess of £25,000) and the rates that they are offered for both types of loan will be negotiated as part of their wider package. Therefore, if such customers are included in the calculation, this would not give a true picture of the 51% representation and the 10% tolerance levels.

Section J: Part 9 - Tool offering indicative price quotes and eligibility indicator

57. Similar to RBS' comments at paragraph 28 above, RBS requires clarification that the reference to ✂.

58. Article 33.2.1 provides that the price and eligibility tool should provide the user with a percentage giving the likelihood of being eligible for a given product at the requested product limit. In response to the CMA's request at paragraph 89 of the Explanatory Note in relation to the minimum information to be returned to users, RBS' would recommend that this requirement is removed from the Draft Order. RBS notes that customers who apply for a product will either be successful or unsuccessful. To give an example, if a customer received a 70% rating, this could be misinterpreted by the customer as being the amount of debt that a Provider would support, i.e. 70% of the total amount

required. Further, if a percentage figure was used, it would be hard to find consistency in this requirement between Providers given the different eligibility criteria they have.

59. Article 33.3 requires that the price and eligibility tool should provide information concerning the proportion of users who used the tool who received an end quote that is the same, better or no more than 10% above the indicative rates. However, this will be difficult to achieve in practice. ✂.

60. RBS notes that paragraph 90 of the Explanatory Note states that the CMA would welcome views on whether a shorter time period than 3 months would be appropriate to measure the number of customers who a received a quote that was better or more than 10% above their indicative quote. RBS recommends that no shorter time period is proposed given the complexities required in gathering such data.

Section K: Part 10 - SME banking comparison tools

61. Article 36.1 provides that product specification for the purpose of the Open Up Challenge must be provided for all ✂.

62. Article 36.1.3 states that, for the purposes of providing product specification to the Open Up Challenge, product benefits should be included. However, in line with paragraph 29 above, RBS' recommends that this is amended to read "features and benefits" as use of the term "benefits" alone could be too subjective and may mean certain information is not included. Most of what is included in RBS' product specifications are features e.g. fixed or variable rates, repayment periods. "Benefits" would include aspects such as "*more predictable cashflow leading to better budgeting*", and the flexibility created for the customer to make partial or full repayments without penalty. Further, the term "benefits" includes things such as reward and packaged account benefits (such as free breakdown cover and travel insurance) whereas the term "features" could include overdraft facilities and mobile banking.

63. Article 37 requires Providers to provide samples of certain anonymised transaction data both during and after the Open Up Challenge Data Sandbox process. Whilst paragraph 99 of the Explanatory Note makes it clear that the anonymisation methods will be a matter to be agreed between the Data Partner appointed by Nesta and the Providers, it is important to note that there is a risk that Providers may have to redact data (based on their data protection obligations) to such an extent that it could become of little use for the sandbox process. RBS also notes that there is no requirement in Article 37 to provide data of a minimum transaction size. Guidance will therefore be needed to ensure that the data that Providers must supply is in a form that will still be useful, whilst also remaining within the limits of what Providers are able to reasonably provide.

64. In relation to Article 38.2, RBS reiterates its previous comments that Providers should not be required to include links to the BBI website until it can be shown to have improved in quality; ✂.

65. Under Article 39 RBS will be required to release data to two or more finance platforms and display links to those platforms on its website. RBS notes that this requirement relates to finance platforms which are designated under the SBEE Act. Whilst it seems unlikely, RBS would suggest that the CMA include wording in the Draft Order and/or Explanatory Note to cover a situation where there are not two finance platforms designated under the SBEE Act (e.g. where some have failed) or where despite Providers' reasonable endeavours they are unable to share the information with a finance platform. Further, RBS notes that the alignment of this remedy with Part 2 will be useful, but only on the basis that the products covered by both remedies are the same (as highlighted in RBS' comments at paragraph 27 above).

66. In addition, RBS has already begun working with the designated finance platforms. However in one instance the platform was unable to receive RBS' data. It will therefore be important that the

timetable for complying with Article 39 allows sufficient time for the finance platforms to take the necessary steps to receive Providers' data, and in any event does not penalise Providers where they have used reasonable endeavours to work with the finance platforms to receive data but have been unable to receive the data due to issues with the platform.

67. In addition, Article 39.1.2 states that Providers should display hyperlinks to the finance platforms on which their products are listed prominently on their website. However, RBS notes that there are already other requirements on Providers to display other links prominently on their websites (see paragraph 34 above). RBS therefore requests that the CMA clarify how these requirements should interact, given the visual space constraints that may exist on Providers' websites.

68. RBS has concerns regarding the ability under Article 41.5 for the CMA to take account of the views of market participants when assessing whether the Open Up Challenge winner is not commercially sustainable. RBS considers that the CMA should provide further explanation of who would be considered "market participants" and how the CMA would seek their views and take them into account.

Section L: Part 11 - Standardisation of BCA account opening

69. RBS has no comments in relation to this remedy.

Section M: Part 12 - Monitoring and compliance reporting

70. RBS reiterates its previous comments (see paragraphs 73 and 78 of its response of 31 October 2016) that it would be administratively onerous to require that all Compliance Reports be signed off by an RBS Bank Board Director and a NED under Article 56.1.2. Instead, it would be more appropriate for Compliance Reports to be signed off by a senior executive of the relevant business division (i.e. the Retail Banking division). This aligns with sign off requirements for similar compliance reporting (e.g. for PPI and for the PCA NI Order).

71. As an overarching comment, RBS considers that the amendments made to the compliance reporting requirements set out in Part 12, and in particular the CMA's proposal of a single compliance report in February of each year, are now significantly clearer and more achievable than in the previous version of the Draft Order.

72. However, RBS notes that the CMA previously intended to consult on the templates for compliance reports but these have not yet been shared with Providers. RBS also notes from paragraph 109 of the Explanatory Note that the CMA intends for the single compliance report in February of each year to be made by way of an online form. It would be useful and a valuable exercise if the CMA could factor in a consultation on the draft templates and online form.

73. In relation to requirements for interim compliance reports, these are required within one month of the relevant provisions coming into force (see Articles 46.1, 49.1, 50.1.3, 51.1.1, 52.1.1, 53.1.1, 54.1.1, 55.1). In light of this, RBS considers that it is particularly important that Providers are given sufficient opportunity to comment on the templates for these interim reports.

74. Without clarity on the CMA's expectations for the content of these reports (including how any data should be collated) it is not possible to comment in detail on whether RBS would be able to provide all of the data and information required in these reports However, RBS expects the content of such interim reports would be limited given the information that will be available in time for inclusion (i.e. RBS expects that these reports will be qualitative in nature as it will only be able to comment on the measures and governance that it has put in place to comply with the relevant Articles. Quantitative data will not be available at that stage, as the methods for gathering such data will need to be set up and then the data itself would need to be gathered and analysed at least one month in arrears).

For example, for the purposes of Part 9, RBS would need to match loan quotations to loan applications which is not a straightforward task and would take a significant amount of time and resources. Therefore, RBS recommends that the provision for interim reports is amended to three months after that Part of the Order coming into force.

75. It is still unclear in a number of instances when certain interim compliance reports will be due. Specific examples are given below but as a general comment, it would be helpful if the CMA could clarify these points in the final version of the Draft Order:

- Article 46 sets out the dates on which a Compliance Report must be submitted for Part 2, in line with the different times which Articles 12, 13 and 14 come into force. However, there is no reference in Article 46 as to whether Part 2 Compliance Statements should be provided for Articles 10 and 11. Further, Article 46 states that a Part 2 Compliance Statement should be submitted on 1 February after Articles 12, 13 and 14 have come into force. However, Articles, 13 and 14 come into force after 1 February 2018 so it is unclear as to whether an interim Compliance Statement is needed for Articles 10, 11 and 12 on 1 February 2018;

- Article 50 sets out the dates on which a Part 6 Compliance Report must be submitted. Given that the provisions of Part 6 come into force at different stages, it is unclear as to whether a Part 6 Compliance Report should be submitted for certain Articles. For example, Articles 26 and 27 come into force before 1 February 2018 but the remaining provisions of Part 6 do not come into force until after this date. Therefore, it is unclear as to whether a Part 6 Compliance Report should be submitted for Articles 26 and 27 only on 1 February 2018;

- Article 53 sets out the dates on which a Part 9 Compliance Report must be submitted. This requires a number of interim Compliance Reports for when the different provisions of Part 9 come into effect as well as on 1 February each year. However, it is not clear when Article 34 (which falls under Part 9) comes into effect. Therefore, it is unclear as to whether an interim compliance report is needed for Article 34;

- Article 54 sets out the dates on which a Part 10 Compliance Report must be submitted. This requires that a Compliance Report be submitted within one month of Part 10 coming into force and on every 1 February thereafter. However, it is not clear as to when Articles 40 and 41 of Part 10 comes into effect as they depend on factors which are outside of the CMA's control. Therefore, it is unclear if or when an interim Compliance Report could be due for Articles 40 and 41; and

- Article 55 sets out the dates on which a Part 11 Compliance Report must be submitted. An interim Compliance Report is due within one month of Part 11 coming into force and every 1 February thereafter. However, given that some of the provisions of Part 11 do not come into effect until 12 months after the Order is made, it is not clear when the first interim report will be due.