

Decision to undertake review of the Northern Ireland Personal Current Account Order

Background to the Northern Ireland PCA Order

1. On 19 February 2008 the Competition Commission (CC) made the Northern Ireland Personal Current Account (PCA) Banking Market Investigation Order 2008 (the Order) for the purpose of remedying, mitigating or preventing the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition specified in the report of the CC entitled the 'Personal Current Account Banking Services in Northern Ireland market investigation'. This was in performance of its duty under section 138 of the Enterprise Act 2002 (the Act) and in exercise of its powers under section 161 of and Schedule 8 to the Act.
2. The Order was [reviewed and varied in 2011](#) following a review by the CC which found that there had been a change of circumstances as a result of the coming into force of the Consumer Credit Directive and the Payment Services Directive.¹ References to the Order below are to the amended Order.
3. Articles 1 to 3 of the Order cover the citation, commencement date, interpretation and powers of direction. Articles 4 to 6 of the Order cover information requirements and include a duty to communicate clearly on marketing communications to PCA customers (Article 4), a duty to provide details of charges and interest rates to customers when selecting a PCA (Article 5) and a duty to notify a customer at least 14 days before deducting overdraft charges and debit interest unless the customer requests to close the PCA (Article 6).
4. Articles 7 and 8 cover switching and include a duty to provide a switching leaflet to customers (Article 7 and 8(7)), a duty to offer an overdraft to switchers applying the usual credit assessment criteria, a duty not to apply or

¹ The Consumer Credit Directive established a common set of rules for consumer credit providers on the form, content and manner of provision of pre-contractual and ongoing information on consumer credit agreements including some types of overdrafts. The Payment Services Directive established a common set of rules for payment services providers on the form, content and manner of provision of pre-contractual and ongoing information on payment services to consumers.

levy any interest/charge on an authorised overdraft facility for at least three months from the date the customer opened the PCA and a duty to repay interest/charges incurred as a result of a failure of the switching process unless there is an authorised overdraft in the case of the new bank (Article 8).

5. Articles 9 and 10 cover compliance with the Order.

Legal framework

6. The CMA has a statutory duty to keep under review orders made under section 161 of the Act by virtue of section 162 of the Act. The CMA shall from time to time consider whether by reason of any change of circumstances an order is no longer appropriate and needs to be varied or revoked.

Issues raised in the public consultation

7. On 20 May 2015, the CMA consulted on whether or not to open a review of the Order. It received 11 responses to its consultation, all of which welcomed the CMA opening a review of the Order.
8. Seven respondents noted that since the previous review in 2011, the Current Account Switch Service (CASS) and switching guarantee has been implemented in 2013.² Respondents to the consultation noted that some of the provisions of CASS overlap with the requirements in the Order, but in other respects the Order goes further than CASS and that there is a risk of confusion and conflict between the two.
9. As mentioned at paragraph 4 above, Articles 7 and 8 of the Order impose certain requirements in relation to switching. The switching guarantee, which includes a requirement to refund any interest (paid or lost) and charges made on either the customer's old or new account as a result of the failure in the switching process, in particular, in the CMA's view would appear to overlap with the requirement to repay interest/charges in the event of a failure in the switching process (Articles 8(4) to 8(6)).
10. The CMA considers that there is a realistic prospect that the implementation of CASS and the switching guarantee represent a change of circumstances.
11. Three respondents also mentioned that the Payment Accounts Directive (PAD) includes provisions in relation to switching but also includes information requirements (pre-contractual Fee Information Document and regular Statement of Fees and standardised information), which may affect Articles 4

² 22 banks and building societies representing over 99% of all current accounts participate in CASS.

and 5 of the Order. The CMA notes that PAD has yet to be transposed into UK law,³ but it will consider the implementation of PAD in its review of the Order.

12. The respondents also noted that other regulation, such as the Consumer Credit Directive, the Payment Services Directive, the FCA Banking Conduct of Business Sourcebook (BCOBS) and Lending Code, included provisions similar to those included in the order. The CMA will consider this regulation in its review of the Order.
13. One respondent also noted that from October 2015 obligations contained in the new Consumer Rights Act will not be materially added to by Article 4 of the Order. The CMA will consider the Consumer Rights Act in its review of the Order.
14. One response also highlighted the FCA research into the impact of annual summaries, questioning whether against that backdrop the provision of leaflets as envisaged in Article 7 of the Order is the best method of communication to encourage switching. The CMA acknowledges recent trials and development of insights into customer behaviour and will consider this issue in its review of the Order.
15. Two respondents were also of the view that the CMA should take into account any market-wide changes since 2008 including changes to market shares, entry and expansion, to PCA products available and their terms, to banks' communications (eg free text alerts) and to channels (eg mobile banking).
16. A number of respondents mentioned that there was no longer a level playing field as requirements for the Northern Ireland PCA market are different from the rest of the UK. A few noted that the Order was in fact a barrier to innovation and competition as it was the reason why Tesco had not entered the Northern Ireland market at the same time as the rest of the UK. A couple urged us to consider the impact of different regulations across the UK.
17. Similarly, a majority of respondents considered that the CMA should consider having one set of provisions that applies in the same manner across the entirety of the UK either by extending the remedies in Northern Ireland to the rest of the UK or removing them.

³ The government is currently consulting on draft regulations to implement the Directive.

Conclusion

18. The CMA is currently undertaking a [market investigation into retail banking](#).⁴ The [terms of reference](#) cover PCAs in the UK.⁵ The scope of this investigation therefore includes the same market as the Order. The CMA is not at this stage able to assess whether there is a realistic prospect that a change of circumstances has occurred for the reasons set out in paragraphs 15 and 16. However, the CMA will be able to assess whether any such market-wide changes have occurred in parallel to its retail banking market investigation and consider the impact of the market investigation in its review of the Order and whether it justifies a separate set of remedies in Northern Ireland. The CMA considers that given the parallel market investigation, there are synergies from also reviewing the Order, which together with the realistic prospect of a change of circumstances in relation to CASS already identified, justifies it opening its review.
19. For the reasons given above, the CMA will undertake a review of the Order.

⁴ The CMA is also [reviewing the 2002 SME undertakings](#).

⁵ The terms of reference also cover the supply of retail banking services to SMEs.