

Directions to HSBCG issued under the Retail Banking Market Investigation Order 2017

1. On 6 November 2014, the Competition and Markets Authority (CMA) board, in exercise of its power under sections 131 and 133 of the Enterprise Act 2002 (the Act) made a reference for a market investigation into the supply of retail banking services to personal current account customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (the market investigation).
2. On 9 August 2016, the CMA published its report on the market investigation, entitled [Retail Banking market investigation: Final report](#) (the Final Report), in which it concluded that:
 - a. there are three separate (and, in certain circumstances, in combination) AECs in each of Great Britain (GB) and Northern Ireland (NI) in relation to PCAs, BCAs and SME lending;
 - b. the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them;
 - c. in order to address the AECs and resulting customer detriment, an integrated package of remedies should be imposed.
3. The integrated package of remedies contains, amongst others, a requirement for the largest retail banks in both GB and NI to develop and adopt an open API banking standard (the Open Banking Remedy).
4. On 2 February 2017 the CMA made the [Retail Banking Market Investigation Order 2017](#) (the Order). For the purpose of these Directions all terms unless expressly stated otherwise shall be as defined in the Order.¹
5. Part 2 of the Order provides for the Open Banking Remedy. Specifically, that the nine largest banks in GB and NI must:
 - (a) Set up an entity (the Implementation Entity) to agree, consult upon, implement, maintain and make widely available, without charge open and common banking standards (Article 10);
 - (b) Appoint an Implementation Trustee to whom they shall provide all such cooperation, assistance and information as the Implementation Trustee may reasonably require to discharge the Implementation Trustee

¹ In relation to the defined term 'HSBC' in paragraph 9.1 of the Order, the majority of obligations in the Order have transferred from HSBC Bank plc to HSBC UK Bank plc, registered with company number 09928412, in accordance with structural reform or 'ringfencing' required by the Financial Services (Banking Reform Act) 2013. Accordingly, the defined terms 'HSBC' and 'HSBCG' should be read to include HSBC UK Bank plc.

Functions and comply with the Mandate (Article 11);

(c) Release product and reference information and service quality indicators in accordance with the Read-only Data Standard (Articles 12 and 13); and

(d) Make up to date PCA and BCA transaction data sets available without charge for read and write access in accordance with the Read/Write Data Standard (Article 14).

6. Pursuant to Article 2.10 of the Order Article 14 comes into force on 13 January 2018. This is subject to Article 10.6 which provides for the Implementation Trustee (with the approval of the CMA) to make changes to the Agreed Timetable and Project Plan which would affect the date Article 14 comes into force.
7. On 10 July 2018 the Implementation Trustee submitted a revised Agreed Timetable and Project Plan to the CMA. The CMA gave notice of its approval of the revision on 11 July 2018. The revision contained inter alia a requirement for Providers to deliver app-to-app authentication functionality for account information services (AIS) and payment initiation services (PIS) redirection (App-to-App Redirection Functionality), by 13 March 2019.
8. On 15 October 2018, HSBCG informed the Implementation Trustee that it would be unable to deliver App-to-App Redirection Functionality for all of its brands' AIS and PIS by the date specified in the Agreed Timetable and Project Plan which is 13 March 2019.
9. HSBCG submitted a proposal to the Implementation Trustee under which it aimed to deliver the App-to-App Redirection Functionality in full by 13 September 2019. It said that the delayed elements would be delivered as follows:
 - i) 30 April 2019 for First Direct AIS.
 - ii) 13 September 2019 for HSBC Retail and First Direct PIS.
 - iii) 13 September 2019 for M&S Bank AIS and PIS (together the Target Dates).

As a result, the Implementation Trustee issued directions to HSBCG on 20 December 2018.

10. On 4 March 2019, HSBCG confirmed to the Implementation Trustee that it could not meet its obligations under the Order, that the delays set out in paragraph 9 above were still envisaged and, in addition, that it would not be able to deliver AIS and PIS functionality to its BCA account holders until 3 May 2019.
11. Accordingly, the Implementation Trustee has now recommended to the CMA that it issue the Directions set out below to HSBCG, which would replace the Implementation Trustee directions of 20 December 2018.
12. Having taken into consideration:
 - a. HSBCG being in breach of the Order;
 - b. the Implementation Trustee's recommendation;
 - c. the potential detriment arising to HSBCG's customers from non-compliance

with the Order;

- d. the provision of Target Dates which provides for appropriately expeditious compliance by HSBCG with Article 14 of the Order in so far as it relates to App-to-App Redirection Functionality;
- e. the need for independent expert advisors to assist the CMA and the Implementation Trustee to monitor delivery of achieving App-to-App Redirection Functionality by the Target Dates; and
- f. HSBCG's
 - i. explanation why it was not in a position to comply with Article 14 from 13 March 2019;
 - ii. engagement with the Implementation Trustee and the CMA to agree the Target Dates for App-to-App Redirection Functionality; and
 - iii. submissions in respect of the CMA's proposed Directions and the alternative actions that it put to us,

the CMA has decided to give these directions to HSBCG (the Directions).

- 13. On 26 March the CMA provided HSBCG with draft directions specifying and describing the steps to be taken by HSBCG for the purpose of securing future compliance with the Order.
- 14. The CMA has had regard to the representations received on the draft directions, and now issues these Directions.

Directions issued under the Retail Banking Market Investigation Order 2017

The CMA makes these directions (Directions) to HSBCG under Article 57 and Article 58 of the Retail Banking Market Investigation Order 2017 (the Order).

1. Commencement

- 1.1 The Directions come into force on [1 April 2019].
- 1.2 Once in force these Directions will continue to be in force until such time they are varied or revoked by the CMA under the Order. The variation or revocation of these Directions does not affect the validity or enforceability of any right or obligations that arose prior to such variation or revocation.
- 1.3 The CMA shall revoke these Directions on confirmation by the Implementation Trustee that HSBCG is compliant with Article 14.1 of the Order with respect to App-to-App Redirection Functionality.

2. Interpretation

- 2.1 In these Directions terms have the same meaning as in the Order, unless stated otherwise.
- 2.2 The headings used in these Directions are for convenience and have no legal effect.

3. Actions specified with respect to Article 14 of the Order

- 3.1 HSBCG must meet the following delivery dates for release 3:
- i) 30 April 2019 for First Direct AIS
 - ii) 3 May 2019 for HSBC Business AIS and PIS
 - iii) 3 September 2019 for HSBC Retail and First Direct PIS
 - iv) 13 September 2019 for M&S Bank AIS and PIS
- (together the “Target Dates”).
- 3.2 Changes to the Target Dates may be:
- (a) proposed by HSBCG in which case they will require approval by the CMA following consultation with the Implementation Trustee;
 - (b) proposed by the Implementation Trustee in which case they will require approval by the CMA and HSBCG;
 - (c) proposed by the CMA following consultation with the Implementation Trustee in which case they will require approval by HSBCG; or
 - (d) proposed in the Initial Report (as defined in paragraph 4.3(a) below) in which case they will require approval by the CMA and HSBCG having consulted with the Implementation Trustee.
- 3.3 For the avoidance of doubt, any change to the Target Dates which is not in accordance with paragraph 3.2 above is not valid absent further directions.

4. Actions specified with respect to oversight of App-to-App Redirection Functionality by the Target Dates

- 4.1 In order to assist the CMA and the Implementation Trustee with the oversight of release 3 by the Target Dates in relation to HSBC Retail and First Direct PIS, HSBCG must, as soon as is reasonable and practicable and in accordance with paragraphs 4.2 and 4.3 below, secure additional third party resource to support the Implementation Trustee (the Third Party Resource).
- 4.2 The terms on which the Third Party Resource is engaged are a matter for HSBCG subject to the following:
- (a) the Third Party Resource must be one selected from the list of firms provided to HSBCG by the Implementation Trustee and must be in place and complete the fieldwork for the Initial Report by 13 May 2019;
 - (b) the terms and conditions of appointment are subject to the approval of the CMA in their entirety;

- (c) the Third Party Resource must act on behalf of the CMA and be under an obligation to carry out their functions to the best of their ability under the direction of the CMA and, where delegated by the CMA, the Implementation Trustee;
- (d) the Third Party Resource must not have or become exposed to a conflict of interest that impairs their objectivity and independence in discharging their duties under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the CMA;
- (e) the Third Party Resource shall be remunerated and reimbursed by HSBCG for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the Third Party Resource's independence or ability to effectively and properly carry out their functions;
- (f) the Third Party Resource will continue to act until the CMA, following the recommendation of the Implementation Trustee, agrees that HSBCG are compliant with Article 14.1 of the Order in respect of release 3 as set out in the Agreed Timetable and Project Plan; and
- (g) any amendment to the terms on which the Third Party Resource is engaged shall be subject to the express written agreement of the CMA.

4.3 The Functions of the Third Party Resource relate to the delivery of App-to-App Redirection Functionality for holders of HSBC Retail and First Direct PIS only and are to assist the Implementation Trustee by:

- (a) considering and reporting, on an initial basis, on the appropriateness and comprehensiveness of the preparations to meet the Target Dates for release 3 as it relates to HSBC Retail and First Direct PIS (the Initial Report). The Initial Report may, at the direction of the Implementation Trustee, include consideration of the technical implementation, customer communications, supporting business processes, supporting technical and legal arrangements with the Implementation Entity including for example Terms and Conditions and management information;
- (b) ongoing review of the Provider's delivery programme against the Target Dates that relate to HSBC Retail and First Direct PIS having regard to the Initial Report;
- (c) reporting in writing to the Implementation Trustee and the CMA monthly, or more frequently if reasonably required, in relation to each of the Functions. This shall include any recommendations of amendments to the Target Dates; and
- (d) where required by the Implementation Trustee or the CMA (or both), reporting on any matter related to these Directions to the Implementation Trustee or the CMA (or both) in writing, in person or via telephone as required. This may include reporting information, views or recommendations without prior disclosure to HSBCG (but where appropriate and feasible HSBCG will be informed in advance or shortly afterwards).

4.4 HSBCG shall provide the Third Party Resource with all such cooperation as the Implementation Trustee and the CMA may reasonably require to allow the

Third Party Resource to discharge the Functions. This shall include, but is not limited to:

- (a) access to relevant documents or information in any other form including information that is confidential or commercially sensitive (or both); and
- (b) reasonable access to accountable individuals associated with the planning, monitoring, execution and supervision of App-to-App Redirection Functionality by the Target Dates, as required.

5. Actions specified with respect to ongoing review of release 3 by the Target Dates

5.1 In relation to HSBC Retail and First Direct PIS, HSBCG shall review the reports prepared by the Third Party Resource pursuant to Article 4.3(a) and (c) and promptly communicate in writing if they:

- (a) dispute the report or any material element of it; and/or
- (b) have information that is not disclosed in the report, and has not previously been disclosed, which has a material bearing on release 3 by the Target Dates or these directions.

5.2. Where the circumstances provided for in Article 5.1(a) or (b) (or both) apply HSBCG shall provide any further information the Implementation Trustee or the CMA reasonably request in relation to the matters raised.

5.3 In relation to each of First Direct AIS PCA holders, HSBC Business AIS and PIS BCA holders, and M&S Bank AIS and PIS PCA holders, HSBCG must submit to the CMA in writing, on a monthly basis, or as otherwise reasonably required by the CMA; either:

- (a) a statement which confirms ongoing compliance with the App-to-App Redirection Functionality Target Dates and that they are not aware of any information from which it could be reasonably concluded that there is a significant risk that they will not be compliant with the Target Dates; or, as the case may be
- (b) a report providing a detailed explanation of why they are unable to make the statement provided for in Article 5.3(a) and what course of action HSBCG propose to take to address the issues identified in such explanation. Such report shall be supported by evidence where relevant.

5.4. HSBCG must ensure that each confirmation provided pursuant to Article 5.1, any supplemental report provided pursuant to Article 5.2 and the statement or report provided pursuant to Article 5.3 is signed by two individuals who are designated senior managers of HSBCG under the FCA Senior Managers and Certification regime.

5.5. If one of the Target Dates for First Direct AIS PCA holders, HSBC Business AIS and PIS BCA holders and M&S Bank AIS and PIS PCA holders App-to-App Redirection Functionality release 3 is missed, the Functions of the Third Party Resource set out in Article 4.3 shall include the additional missed App-to-App Redirection Functionality release 3 requirement from the relevant Target Date.

- 5.6. In relation to each of HSBCG's App-to-App Redirection Functionality delays, HSBCG must submit to the Implementation Trustee in writing, on a monthly basis, or as otherwise reasonably required by the CMA, a report which covers:
- (a) The current status of the release 3 programme detailing the status of each individual deliverable's milestones covering build/development, testing, and deployment.
 - (b) For each journey pertaining to release 3's App-to-App Redirection Functionality, specific details of agile sprint activity (e.g. burn charts), testing with Third Party Providers, risks, issues and advanced sharing of wireframes.
 - (c) For the overall release 3 programme, key risks, dependencies, and emerging issues, and the overall programme's demand versus capacity planning (resourcing).
 - (d) HSBCG to follow the Implementation Entity's Project Management Group's Status Report guidelines in preparing these reports.
- 5.7. HSBC must attend a monthly bilateral monitoring meeting with the Implementation Trustee to review each monthly report provided pursuant to Article 5.6.