

Directions to Santander 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.
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 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), which forms part of release 3, by 13 March 2019.

8. On 14 February 2019, Santander informed the Implementation Trustee that it would be unable to deliver App-to-App Redirection Functionality by the date specified in the Agreed Timetable which is 13 March 2019.

9. Santander submitted a proposal to the Implementation Trustee under which it would deliver this functionality in full by 17 June 2019.

10. On 19 March 2019, Santander confirmed to the Implementation Trustee that it could not meet its obligations under the Order. On 28 March Santander informed the Implementation Trustee that it envisaged the App-to-App Redirection Functionality being delivered in full by 22 August 2019 (the Target Date).

11. Accordingly, the Implementation Trustee has now recommended to the CMA that it issues the Directions set out below to Santander.

12. Having taken into consideration:

- a. Santander being in breach of the Order;
- b. the Implementation Trustee's recommendation;
- c. the potential detriment arising to Santander's customers from non-compliance with the Order;
- d. the provision of a Target Date which provides for appropriately expeditious compliance by Santander 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 Date; and

f. Santander's

- i. explanation for why it was not in a position to comply with Article 14 from 13 March 2019; and
- ii. engagement with the Implementation Trustee and the CMA to agree the Target Date for App-to-App Redirection Functionality

the CMA has decided to give directions to Santander (the Directions).

13. On 26 March the CMA provided Santander with draft directions specifying and describing the steps to be taken by Santander 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.

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The CMA makes these directions (the Directions) to Santander 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 as 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 Santander 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 complying with Article 14 of the Order and monitoring

- 3.1 Santander must deliver full App-to-App Redirection Functionality by 22 August 2019 (the Target Date).
- 3.2 Changes to the Target Date may be:
 - (a) proposed by Santander 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 Santander;
 - (c) proposed by the CMA following consultation with the Implementation Trustee in which case they will require approval by Santander; 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 Santander having consulted with the Implementation Trustee.
- 3.3 For the avoidance of doubt, any change to the Target Date 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 Date

- 4.1. In order to assist the CMA and the Implementation Trustee with the oversight of release 3 by the Target Date in relation to the delivery of Santander's App-to-App Redirection Functionality, Santander 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 is a matter for Santander subject to the following:
 - (a) the Third Party Resource must be one selected from the list of firms provided to Santander by the Implementation Trustee and must be in place and complete the fieldwork for the Initial Report during the week commencing 22 April 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 Santander 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 Santander are compliant with Article 14.1 of the Order in respect of App-to-App Redirection Functionality 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 Santander PCAs only and are to assist the Implementation Trustee by:

- a) considering and reporting, on an initial basis, on the appropriateness and comprehensiveness of preparations to meet the Target Date for App-to-App Redirection Functionality (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 to meet the Target Date for App-to-App Redirection Functionality 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 the Functions. This shall include any recommendations of amendments to the Target Date; 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 Santander (but where appropriate and feasible Santander will be informed in advance or shortly afterwards).

4.4. Santander 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 Date, as required.

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

- 5.1. Santander 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 the implementation of App-to-App Redirection Functionality by the Target Date or these Directions.
- 5.2. Where the circumstances provided for in Article 5.1(a) or (b) (or both) apply Santander shall provide any further information the Implementation Trustee or

the CMA reasonably request in relation to the matters raised.

- 5.3. Santander must ensure that each confirmation provided pursuant to Article 5.1, any supplemental report provided pursuant to Article 5.2 is signed by two individuals who are designated senior managers of Santander under the FCA Senior Managers and Certification regime.
- 5.4. In relation to Santander's App-to-App Redirection Functionality delay, Santander 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 (TPPs), 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) Santander to follow the Implementation Entity's Project Management Group's Status Report guidelines in preparing these reports.
- 5.5. Santander must attend a monthly bilateral monitoring meeting with the Implementation Trustee to review each monthly report provided pursuant to Article 5.4.