

## Variation to 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 and Northern Ireland 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 open API banking standards (the Open Banking Remedy).
4. On 2 February 2017 the CMA made the Retail Banking Market Investigation Order 2017 (the Order)<sup>1</sup>. 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<sup>2</sup> must:

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<sup>1</sup>The Order was made in performance of the CMA's duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the Final Report.

<sup>2</sup> Barclays, LBG, HSBCG, RBSG, Santander, Nationwide, Danske, BoI and AIBG

- (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 who 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 came into force on 13 January 2018. This is subject to Article 10.6 which provided 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 the 22 November 2017, the CMA gave notice of its approval to a revision of the Agreed Timetable and Project Plan proposed by the Implementation Trustee pursuant to Article 10.6 of the Order. This revision did not alter the date on which Article 14 of the Order comes into force in respect of “release 1” of the Read/Write Data Standard.
8. On 13 October 2017 Santander informed the CMA that they would like to request a delayed launch date for Article 14 of the Order in respect of some 40,000 SME customers of its Cater Allen subsidiary. On 27 November 2017 it told us that in addition, around 12,000 SME accounts on Santander’s corporate banking platform would not be compliant by 13 January 2018.
9. On 8 December 2017 following discussions with the CMA and the Implementation Entity Santander submitted an implementation plan which was reviewed by the CMA and the Implementation Trustee and, following Santander’s acceptance of proposed amendments, agreed.
10. On 8 December 2017 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. The CMA had regard to the representations received on the draft.

11. On 19 December 2017, the CMA issued directions to Santander (the “Directions”). These stated that Santander must comply with the implementation plan set out in Schedule 1 to these Directions (“the Implementation Plan”).
12. Santander informed the CMA on 1 November 2018 and the Implementation Trustee on 5 November 2018 that, due to delays in the overall replatforming project through which the open banking requirement will be delivered for Cater Allen, it would not deliver open banking for the c.40,000 business current accounts of Cater Allen by 13 January 2019 as set out in the Implementation Plan.
13. On 8 January 2019, following discussions with the CMA and the Implementation Entity, Santander provided a revised implementation plan (the “Revised Implementation Plan”), which was subsequently reviewed and agreed by the CMA and the Implementation Entity.
14. Having taken into consideration:
  - (a) the potential detriment arising from non-compliance with the Order;
  - (b) the importance of ensuring compliance with Article 14 on the date it comes into force is balanced against security risks that can be otherwise mitigated;
  - (c) the provision of the Revised Implementation Plan; and
  - (d) Santander’s
    - (i) explanation for why it was not in a position to comply with Article 14 from 13 January 2019 in respect of certain BCA customers of Cater Allen; and
    - (ii) engagement with the Implementation Entity and the CMA to develop a Revised Implementation Plan;

the CMA has decided to vary these Directions.

## Variations to Directions issued under the Retail Banking Market Investigation Order 2017

1. The Implementation Plan in Schedule 1 to the Directions will be replaced by the Revised Implementation Plan set out in Annex 1. All references in the Directions to the Implementation Plan are to be read as references to the Revised Implementation Plan.
2. New paragraphs at 3.4 and 3.5 to be inserted stating:
  - 3.4 “Santander must submit to the Office of the Implementation Trustee’s Monitoring Function in writing, on a monthly basis, release status reports (the “Status Reports”). These Status Reports should cover:
    - (a) The current status of the release programme detailing the status of each individual deliverable’s milestones covering build/development, testing, and deployment.
    - (b) Specific details of agile sprint activity (e.g. burn charts), testing with Third Party Providers (TPP’s), risks, issues and advanced sharing of wireframes.
    - (c) For the overall release programme, key risks, dependencies, and emerging issues, and the overall programme’s demand versus capacity planning (resourcing).
    - (d) Santander to follow the Open Banking Implementation Entity (OBIE) Project Management Group’s Status Report guidelines in preparing these Status Reports.
  - 3.5 Santander to implement any actions reasonably required by the Implementation Trustee for Cater Allen to comply with the Implementation Plan following submission and review of the Status Reports.
3. A consolidated version of the Directions is set out in Annex 2.

## **Annex 1: Revised Implementation Plan (non-confidential version)**

<b>Key Milestones</b>	<b>Date</b>
Customer Notice of Variation Issued	March
Customer Go Live	May - June

## **Annex 2**

The CMA makes these directions (“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 20 December 2017.
- 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 are compliant with Article 14.1 of the Order.

### **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 comply with the Implementation Plan.
- 3.2 Changes to the Implementation Plan may be:
  - (a) proposed by Santander in which case they will require approval by the CMA following consultation with the Implementation Trustee and where appropriate the Independent Monitor;
  - (b) proposed by the CMA following consultation with the Implementation Trustee in which case they will require approval by Santander;
- 3.3 Santander 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 Implementation Plan 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 Implementation Plan within a period of a month; 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 Santander propose to take to address the issues identified in such explanation. Such report shall be supported by evidence where relevant.

3.4 Santander must submit to the Office of the Implementation Trustee's Monitoring Function in writing, on a monthly basis, release status reports (the "Status Reports"). These Status Reports should cover:

- (a) The current status of the release programme detailing the status of each individual deliverable's milestones covering build/development, testing, and deployment.
- (b) Specific details of agile sprint activity (e.g. burn charts), testing with Third Party Providers (TPP's), risks, issues and advanced sharing of wireframes.
- (c) For the overall release programme, key risks, dependencies, and emerging issues, and the overall programme's demand versus capacity planning (resourcing).
- (d) Santander to follow the Open Banking Implementation Entity (OBIE) Project Management Group's Status Report guidelines in preparing these Status Reports.

3.5 Santander to implement any actions reasonably required by the Implementation Trustee for Cater Allen to comply with the Implementation Plan following submission and review of the Status Reports.

## Schedule 1: Revised Implementation Plan (non-confidential version)

<b>Key Milestones</b>	<b>Date</b>
Customer Notice of Variation Issued	March
Customer Go Live	May - June