

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 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 an open API standard (the Open Banking Remedy).
4. On 2 February 2017 the CMA made the Retail Banking Market Investigation Order 2017 (the Order)¹. 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 NI² must:

¹ 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.

² 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 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 the 22nd 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 6 November HSBCG informed the CMA that it would like to request a delayed launch date for Article 14 of the Order in respect of payments functionality for HSBC PCA holders and account information and payment initiation functionality for first direct and M&S Bank PCA holders. On 13 December 2017 HSBCG informed the CMA that they would like to request a delayed launch date in respect of payments functionality for HSBC BCA holders.
 9. On 23 November following discussions with the CMA and the Implementation Trustee HSBCG submitted an implementation plan in respect of HSBC, first direct and M&S Bank which was reviewed by the CMA and the Implementation Trustee and, following HSBCG’s acceptance of proposed amendments, agreed subject to the Early Review provided for in Article 3.5 of the Directions. This program plan is set out in Schedule 1 to these Directions (“the Implementation Plan”). Under the Implementation Plan, the delayed delivery dates would be: 28 February 2018 for payments functionality for HSBC PCA and BCA holders; and 30 April 2018 for account information and payment initiation functionality for first direct and M&S Bank PCA holders.
 10. Having taken into consideration:

- (a) the potential detriment to HSBCG's PCA and BCA customers 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 risks that can be otherwise mitigated;
- (c) the provision of the Implementation Plan (as discussed in paragraph 9 above) notwithstanding the need for an early review of it (amending it where necessary) to ensure it is comprehensive and provides for appropriately expeditious compliance by HSBCG with Article 14 of the Order in respect of first direct;
- (d) the need for independent expert advisors to assist the CMA and the Implementation Trustee to review delivery of the Implementation Plan; and
- (e) HSBCG's
 - i. explanation for why it was not in a position to comply with Article 14 from 13 January 2018; and
 - ii. engagement with the CMA to develop an appropriate implementation plan;

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

11. On 14 December 2017 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.
12. 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 20 December 2017.
- 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.

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

- 3.1 HSBCG must comply with the Implementation Plan.
- 3.2 Changes to the Implementation Plan 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) and related to first direct 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 Implementation Plan which is not in accordance with paragraph 3.2 above is not valid absent further directions.

4. Actions specified with respect to oversight of the Implementation Plan

- 4.1 In order to assist the CMA and the Implementation Trustee with the oversight of the Implementation Plan in relation to first direct, HSBCG must, as soon as is reasonable and practicable and in accordance with paragraph 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 arranged is a matter for HSBCG subject to the following:
- (a) the Third Party Resource from one of the firms provided to HSBCG by the CMA and must be in place by no later than 10 January 2018;
 - (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 1 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 account information and payment initiation functionality for holders of first direct PCAs only and are to assist the Implementation Trustee in:
- (a) considering and reporting, on an initial basis, on the appropriateness and comprehensiveness of the Implementation Plan as it relates to first direct (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 Open Banking Implementation Entity including for example Terms and Condition's and management information;

- (b) ongoing review of the Provider's delivery programme against the milestones set out in the Implementation Plan that relate to first direct 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 Implementation Plan; 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 the Implementation Plan, as required.
- 5. Actions specified with respect to ongoing review of the Implementation Plan**
- 5.1 In relation to first direct, 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 the Implementation Plan 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 M&S Bank PCA holders and HSBC PCA and BCA 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 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 revised launch dates set out in the Implementation Plan; or, as the case may be, or
 - (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.
- 6. **Actions specified with respect to use of data provided by other parties pursuant to Article 14**
- 6.1 While these directions remain in place and with respect to each of the relevant HSBCG brands separately serving HSBC PCA holders, HSBC BCA holders, M&S Bank PCA holders and first direct PCA holders, HSBCG shall not other than in accordance with paragraph 6.2 below make available or promote, any application, service or feature of a service under that brand that:
 - (a) makes use of data provided by other Providers pursuant to Article 14.1 of the Order; and/or
 - (b) provides for payment initiation that depends on other Providers compliance with the Order.
- 6.2 The restriction in paragraph 6.1 will cease to apply:
 - (a) in relation to paragraph 6.1(a) and in respect of each brand, from the date on which HSBCG becomes compliant with the account information aspects of Article 14.1 of the Order in relation to that brand;
 - (b) in relation to paragraph 6.1(b) and in respect of each brand, from the date on which HSBCG becomes compliant with the payment initiation aspects of Article 14.1 of the Order in relation to that brand; or
 - (c) with express written permission of the CMA, which shall not be unreasonably denied.

Schedule 1 Implementation Plan

SCHEDULE 2: HSBC Implementation Plan for services under Directions

- ★ Colleague communications and training
- ★ Customer communications/ website
- ★ Procedures, MI & governance
- ★ Go Live

