

Directions to Nationwide Building Society 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 banking 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 shall:

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 came 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 10 January 2018, Nationwide Building Society informed the CMA that it would like to request a delayed launch date in respect of Article 14 of the Order since it would be unable to deliver account information and payment initiation functionality to its PCA customers until February 21st and February 28th respectively.
- 9. On 11 January 2018, following discussions with the CMA and the Implementation Trustee, Nationwide Building Society submitted an implementation plan which was reviewed by the CMA and the Implementation Trustee and, following Nationwide Building Society’s acceptance of proposed amendments, agreed. This program plan is set out in Schedule 1 to these Directions (“the Implementation Plan”).
- 10. Having taken into consideration:
 - (a) the potential detriment to Nationwide Building Society’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); and
- (d) Nationwide Building Society's:
 - i. explanation for why it was not in a position to comply with Article 14 from 13 January 2018;
 - ii. timing in informing the CMA at a very late stage that it would not be able to comply with Article 14 when it came into force; and
 - iii. engagement with the CMA to develop an appropriate implementation plan;

the CMA has decided to give directions to Nationwide Building Society.

- 11. On 11 January 2018 the CMA provided Nationwide Building Society with draft directions specifying and describing the steps to be taken by Nationwide Building Society 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 the directions set out below (the "Directions").

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The CMA makes these Directions to Nationwide Building Society under Article 57 and Article 58 of the Order.

1. Duration

- 1.1 These Directions come into force on 15 January 2018.
- 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 Nationwide Building Society 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 and monitoring

- 3.1 Nationwide Building Society shall comply with the Implementation Plan at Schedule 1.
- 3.2 Changes to the Implementation Plan may be:
 - (a) proposed by Nationwide Building Society in which case they will require approval by the CMA following consultation with the Implementation Trustee;
 - (b) proposed by the CMA following consultation with the Implementation Trustee in which case they will require approval by Nationwide Building Society;
- 3.3 Nationwide Building Society shall provide to the CMA and Implementation Trustee:
 - (a) a weekly statement which confirms ongoing compliance with the Implementation Plan against project milestones agreed with the Implementation Trustee and that Nationwide Building Society is not aware of any information from which it could be reasonably concluded that there is a significant risk that it will not be compliant with the Implementation Plan within a period of a week; or, as the case may be,
 - (b) a report providing a detailed explanation of why it is unable to make the statement provided for in Article 3.3(a) and what course of action Nationwide Building Society proposes to take to address the issues identified in such explanation. Such report shall be supported by evidence where relevant; and
 - (c) all internal Nationwide Building Society weekly reports presented to senior management and any other internal Nationwide Building Society reports or communications reasonably requested by the Implementation Trustee concerning the progress of the project and / or risks arising to its delivery to the timetable set out in the Implementation Plan.

3.4 Nationwide Building Society shall provide to the Implementation Trustee any information and assistance he reasonably requests to assess compliance with the Implementation Plan or the Open Banking Remedy more generally, including for the avoidance of doubt the API and security protocol standards, at the time or times reasonably requested by the Implementation Trustee.

4. Actions specified with respect to use of data provided by other parties pursuant to Article 14

4.1 While these Directions remain in place Nationwide Building Society shall not other than in accordance with paragraph 4.2 below make available or promote, any application, service or feature of a service 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.

4.2 The restriction in paragraph 4.1 will cease to apply:

- (a) in relation to paragraph 4.1(a) and in respect of each brand, from the date on which Nationwide Building Society becomes compliant with the account information aspects of Article 14.1 of the Order in relation to that brand;
- (b) in relation to paragraph 4.1(b) and in respect of each brand, from the date on which Nationwide Building Society 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

Nationwide Read / Write Delivery Plan

