

Decision to launch a review of Part 6 of the Retail Banking Market Investigation Order 2017

Introduction

1. The Competition and Markets Authority (**CMA**) has decided to conduct a review of Part 6 of the [Retail Banking Market Investigation Order 2017](#) (the Order). The Order, which was made on 2 February 2017, followed an inquiry by the CMA which took place between 2014 and 2016. The Order was designed to implement CMA recommendations that sought to address competition concerns arising in relation to the supply of personal current accounts (**PCAs**) and of banking services to small and medium-sized enterprises (**SMEs**).

The CMA investigation and findings

2. On 6 November 2014, the 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 PCA customers and to SMEs in the United Kingdom (the **market investigation**).
3. On 10 November 2014, the CMA appointed from its panel a group of five independent members to conduct the market investigation and publish a final report. The group was required to decide whether any feature, or combination of features, of each relevant market prevents, restricts or distorts competition and thereby has an adverse effect on competition (**AEC**) and if so, what action should be taken.
4. In relation to personal customers, the CMA's terms of reference included the supply of PCAs, which includes overdrafts. In relation to SMEs, they included business current accounts (**BCAs**), overdrafts, deposit accounts and lending products, but they excluded non-lending products such as insurance, merchant acquiring, hedging and foreign exchange.

5. 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 consisting of:
 - i. three cross-cutting foundation measures to underpin increased competition for PCAs and BCAs which have the object of increasing customer engagement and making it easier for personal and business customers to compare the prices and service quality of different providers and of encouraging the development of new services;
 - ii. additional measures to make current account switching work better, including building on and improving the existing current account switch service;
 - iii. a set of measures aimed at PCA overdraft users, a group of customers who suffer particularly from the competition failures in the PCA market; and
 - iv. a set of measures targeted at the specific problems in SME banking, enhancing SME access to information through new comparison tools, requiring banks to offer an indicative price quote and eligibility indicator tool, requiring banks to agree and adopt a core set of standards for SMEs opening a BCA and additional published information thereby reducing the hold that incumbent banks have in the market for BCAs and SME loans.
6. On 23 November 2016, in accordance with section 165 of, and paragraph 2(1)(a) of Schedule 10 to the Act, the CMA published a [Notice of its intention to make an Order](#) as part of a package of remedies to remedy, mitigate or prevent the AEC and any resulting customer detriment, which it had identified in the report.
7. The package of remedies was implemented by: (a) the Order made on 2 February 2017 (b) [undertakings entered into by Bacs Payment Schemes](#)

[Limited](#) on 17 January 2017; and (c) recommendations made in the Final Report to HM Treasury, the Department for Business, Energy and Industrial Strategy, and the Financial Conduct Authority.

The Retail Banking Market Investigation Order 2017

8. The Order introduced, among other things measures to address the problems faced by PCA overdraft users (paragraph 5(c)(iii). of this document). These measures formed **Part 6** of the Order.
9. Part 6 of the Order came fully into force on 2 February 2018 and delivers the programme of overdraft alerts with grace periods for PCA customers. It requires qualifying banks to automatically enrol all their customers into an unarranged overdraft alert; and to offer, and alert customers to the opportunity to benefit from, grace periods during which they can take action to avoid or reduce all charges resulting from unarranged overdraft use.

Potential change of circumstances

10. The FCA announced on 18 December 2018 [rules on overdraft alerts](#), which enter into force on 18 December 2019. Further, on 7 June 2019 the [FCA announced reforms](#) to the way banks charge for overdrafts. On the evidence currently available, there is a realistic prospect of finding a change of circumstances relevant to Part 6 of the Order as a result of the FCA's rules, as we consider that the FCA's rules, when implemented, would effectively duplicate the effect of Part 6 of the Order.
11. As such, we will consider whether, when the FCA's alert rules become active on 18 December 2019, there will be a change of circumstances as defined in Article 162(2) of the Enterprise Act 2002, in that the provisions of Part 6 of the Order will be effectively duplicated by other regulatory provisions.
12. The CMA foresaw this potential change of circumstances at the time of publishing the Final Report, stating

"While we are taking actions ourselves as well as recommending actions to the FCA in order to achieve a timely solution, we recognise the need to avoid unnecessary regulatory duplication. We could remove all or part of our Order once the FCA has concluded its research and, subject to the results of this research, is ready to introduce its own measures to increase overdraft customers' engagement with their overdraft usage and charges." (Figure 15.1)

13. We will consider whether, from 18 December 2019, Part 6 of the Order would have been superseded and should therefore be revoked. We are also considering whether associated provisions, such as those relating to compliance reporting for Part 6 only, should also be revoked.
14. We are also considering whether our approach may vary for parties who are being investigated by the CMA for a breach or breaches of Part 6 of the Order at the time the FCA rules become active.
15. Should a change of circumstances be found, the CMA proposes only to revoke Part 6 of the Order. The rest of Order will be unaffected and remain in force.

Prioritisation principles

16. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes of work are undertaken across all areas of responsibility. The CMA has assessed the information available in relation to the Order in reaching its decision in the light of its published prioritisation principles. These principles are strategic significance, impact, risk and resources. We consider each of these in turn.
17. **Strategic significance:** In the CMA's [Annual Plan 2019/20](#) we state that we will "work alongside the economic regulators, supporting them to use their concurrent competition powers to protect consumers and make markets in their sectors work in their favour (paragraph 2.17)". The introduction of rules by the FCA will allow the CMA to feed our experience of enforcing a programme of Alerts to the FCA. Reviewing and revoking Part 6 of the Order will avoid regulatory duplication.
18. **Impact:** The removal of unnecessary constraints on businesses generates benefits for customers, as does ensuring that regulatory measures effectively address market problems. Because the FCA's new rules effectively duplicate Part 6 of the Order, we think that revoking Part 6 of the Order will have a positive impact on business through removing an unnecessary regulatory burden.
19. **Risk:** We consider that there is little risk to reviewing this Order. We consider there is a greater risk in not reviewing the Order and causing regulatory duplication for PCA providers when the FCA's rules become active.
20. **Resource:** The CMA considers that conducting a review of the Order would involve a modest amount of resource during the next few months. Moreover, the CMA notes that the removal of remedies that are no longer appropriate

allows the CMA to focus its resources on monitoring remedies that continue to generate benefit for consumers and the UK economy.

Decision to review the Order

21. The evidence currently available to the CMA indicates a realistic prospect of finding a change of circumstances relevant to Part 6 of the Order. The CMA has assessed the review of this Order against its published prioritisation criteria and decided to launch a review of Part 6.
22. The review will be conducted by a group of independent panel members. Once the group is appointed we will publish on our case page an administrative timetable for the review. We expect this to be completed by December 2019.

Stakeholder views

23. We are keen to hear the views and evidence from interested parties, including PCA providers and consumer groups to help us carry out this review. In particular, we would like to hear stakeholders' views on the extent to which the FCA's rules on Alerts would render Part 6 of the Order superfluous and should be revoked and conversely whether any elements of Part 6 should remain. This will help us reach a conclusion on whether there has been a relevant change in circumstances in this sector, such that the Order should be varied to allow for Part 6 to be revoked when the FCA's rules come into force.
24. Responses should be sent to the following address and should arrive at the CMA by 5pm on Monday 22 July.

Retail Banking Order review team
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD
Email: remedies.reviews@cma.gsi.gov.uk

25. The process the CMA follows during a review of an existing remedy is described in the [CMA's guidance](#) on its website.