

Competition & Markets Authority's Consultation on Revoking Part 6 of the Retail Banking Market Investigation Order

Introduction

Barclays welcomes the CMA's announcement on 1 July 2019 that in light of the Financial Conduct Authority's (FCA) work on overdrafts including alerts as part of its High Cost of Credit review, Part 6 of the Retail Banking Market Investigation Order 2017 (the Order) should in the CMA's opinion cease to apply from 18 December 2019 when the FCA's alert regime comes into force.

We appreciate that the CMA is required under section 162 of the Enterprise Act to consult on the variation of the Order. We consider that this consultation needs to be expanded from Part 6 to also take into account aspects of Part 7 (Maximum Monthly Charge) which will be rendered obsolete by virtue of the new FCA alerts regime and changes the FCA is introducing from 6 April 2020 restricting the charges that can be levied on personal current accounts (PCAs).¹ This changes the conditions which led the CMA to introduce the MMC remedy and therefore the situations in which the MMC applies and customers need to be made aware of the "Relevant Charges" they face; the CMA should consider whether this constitutes a change of circumstances under s162.

While the CMA may wish to consider the FCA's 2020 changes in isolation, their impact on alerts and the Order more generally means it makes sense to work these through now in consultation with those subject to the Order and make allowance for these changes in the Order. If the CMA has concerns making a change before the FCA's Consumer Sourcebook rule CONC 5C on "Overdraft pricing" comes into force, the CMA could clarify these changes are to come into effect from 6 April 2020 in step with the FCA.

Alerts moving to the FCA

Barclays is pleased that the CMA proposes to revoke Part 6 of the Order in full and intends to align this with 18 December 2019, when the FCA will take on PCA alerts through its amendments to the Banking: Conduct of Business sourcebook ("BCOBs"). The RBMI Final Report and consultation on the Order was also always clear that the FCA should continue to conduct further work in relation to overdrafts.² The Explanatory Notes to the Order were also clear that this work could render provisions under the Order unnecessary and subject to review.³ Given the FCA's High Cost of Credit Review (overdrafts) and resulting move to prescribe alerts for PCAs in the BCOB part of the FCA's Handbook, we are therefore pleased to see the CMA recognise the need to pass the baton to the FCA.

We are fully supportive of the removal of Part 6 of the Order and the falling away of the compliance statement/reporting requirements in Art 50. Any other approach will cause confusion and duplication.

From a consumer perspective, the FCA's work on overdrafts takes the CMA's RBMI work and provides further protections given the extension to both arranged and unarranged overdrafts as well as prescribing the format for presentation of overdraft costs to allow comparison by consumers.

Part 7 MMC

The FCA's changes to BCOBs as regards the pricing structure of PCAs will come into force from April 2020. These changes will have a direct impact on the scope of Relevant Charges under Art 28.5.2 of the Order. In summary,

¹ See the FCA's "High-cost Credit Review: Overdrafts policy statement" (FCA's Overdrafts policy statement): <https://www.fca.org.uk/publications/policy-statements/ps19-16-high-credit-review-overdrafts>

² See Figures 15.1 and 15.2 and paragraph 193 (c) in the Final Report (amongst others).

³ See Paragraph 8 of the Explanatory Notes to The Order.

the FCA has effectively capped unarranged fees at the arranged rate and required that Refused Payment Fees⁴ are aligned to the actual costs incurred.

Barclays considers that there remains a role for the MMC in terms of guiding customers on the maximum charges they may receive for unarranged borrowing. However, as the new FCA rules cover all arranged and unarranged borrowing charges, and require providers to communicate clearly about both, we consider the CMA needs to reflect on how the MMC requirements in Part 7 of the Order need to be changed to fit with this new approach compared to market conditions at the time of the CMA's original investigation in 2014-16.

Barclays recommends that:

- 1) The MMC requirements should be revised to enable providers to communicate the maximum monthly charge for unarranged borrowing in the manner that they find most effective for customer engagement and understanding. Specifically, Part 7 should be modified to require only that short form language (or equivalent) should be required to be used in printed documents to reflect the more limited purpose of these warnings within the new FCA BCOBs framework.
- 2) The MMC requirements are modified to remove the need for providers to include the MMC short form language in alerts to reflect the limited circumstances in which Relevant Charges will occur.

Wider Considerations

While the CMA has specifically identified Part 6 as needing revocation, Barclays considers that a general review of the Order should be undertaken by the CMA in light of the changes in competition since 2016.

⁴ Defined as "fees for refusing a payment due to lack of funds" by the FCA (see paragraph 1.8 of the FCA's Overdrafts policy statement); and described as "charges associated with refusing a payment due to a lack of funds" under Article 28.5.2(d) of the Order.