

Variation to Directions to Santander issued under the Retail Banking Market Investigation Order 2017

Introduction

1. The CMA is varying the directions issued to Santander UK plc (Santander) on 19 December 2017 concerning its failure to implement Part 2 of the Retail Banking Market Investigation Order 2017 (the Order) relating to Open Banking in respect of its subsidiary Cater Allen, as varied on 29 January 2019.
2. The CMA considers Santander's failure to comply with Article 14 of Part 2 of the Order as a serious matter.

Background

3. 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).
4. 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.
5. 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).

6. 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.
7. Part 2 of the Order provides for the Open Banking Remedy. Specifically, that the nine largest banks in GB and NI² must:
 - (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).
8. 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.
9. 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.
10. On 13 October 2017 Santander requested 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 the CMA that in addition, around 12,000 SME accounts on Santander’s corporate banking platform would not be compliant by 13 January 2018.

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

11. 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.
12. The CMA then 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.
13. On 19 December 2017, the CMA issued directions to Santander (the Directions). The Directions stated that Santander must comply with the implementation plan set out in Schedule 1 to the Directions, which, in short, required full compliance with Article 14 of the Order by 13 January 2019.
14. Santander informed the CMA on 1 November 2018 and the Implementation Trustee on 5 November 2018 that, due to it having experienced delays in its overall re-platforming project through which the open banking requirement would 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.
15. On 8 January 2019, following further discussions with the CMA and the Implementation Entity, Santander provided a second revised implementation plan (the Revised Implementation Plan), which was subsequently reviewed and agreed by the CMA and the Implementation Trustee.
16. On 29 January 2019, the CMA issued Santander with revised Directions with a further deadline for compliance. These revised Directions were accompanied by the Revised Implementation Plan, in which Santander committed to provide full compliance with Article 14 of the Order by the second extended deadline of the end of June 2019.
17. Santander subsequently informed the CMA and the Implementation Trustee on 5 June 2019 that, it had experienced technical issues identified during the 'model office' testing of the migration of customers to a new system, and it did not consider that it would be in the best interests of its customers to press ahead with the migration without further testing, and therefore it would not deliver open banking for the c.40,000 business current accounts of Cater Allen by the second revised deadline that it had agreed with the CMA for the end of June 2019 as set out in the Revised Implementation Plan. However, at this time, it stated that a two month extension would be sufficient for it to achieve compliance, and therefore that it would meet the requirements of

Article 14 of the Order by the end of August 2019. Santander issued a written apology to each of the affected 40,000 Cater Allen customers on 28 June 2019.

18. Santander informed the CMA and the Implementation Trustee in its monthly reports of 13 August 2019 and 18 October 2019 that it had experienced further delays in migrating its customers to its new banking system and again due to its overriding objective of safely migrating its customers to its new platform, it could not deliver open banking for the c.40,000 business current accounts of Cater Allen by the dates previously communicated to the CMA. Santander informed the CMA and the Implementation Trustee that it now considered that it would meet the requirements of Article 14 of the Order by the end of November 2019.
19. Santander informed the Implementation Trustee on 25 October 2019, and the CMA on 1 November 2019 that following the completion of a stage of its phased migration, it needed to stabilise its new platform following multiple changes and this was in the best interests of Cater Allen's customers and its wider operational resilience. Due to the resulting delays in migrating Cater Allen's customer base to its new banking system, it could not deliver open banking for the c.40,000 business current accounts of Cater Allen by the end of November 2019. Santander informed the CMA and the Implementation Trustee that it now considered that it would meet the requirements of Article 14 of the Order by the end of March 2020.
20. On 31st December 2019 Santander provided OBIE and on 6 January 2020 the CMA with a progress report indicating that while 15,000 customers had been successfully migrated, full compliance would be unlikely to be achieved until Q2 2020 for the final tranche of c. 25,000 customers, although its target remained Q1 2020.
21. On 20 January 2020, the CMA provided Santander with draft revised directions specifying and describing the steps to be taken by Santander for the purpose of securing future compliance with the Order. Santander provided representations on those draft revised directions on 27 January 2020 and an updated Implementation Plan on 2 March 2020 (the Third Implementation Plan). The CMA has had regard to the representations received on the draft revised directions, and now issues these Revised Directions.

The breach

22. Santander's subsidiary Cater Allen is still not compliant with Release 1 of Part 2 of the Order in relation to Open Banking, as it has not adopted open API banking standards.

23. This has a significant effect on its members' ability to benefit from Open Banking. Open Banking enables small businesses to share their data securely with other banks and with third parties, enabling them to manage their accounts with multiple providers through a single digital 'app', to take more control of their funds (for example to avoid overdraft charges and manage cashflow) and to compare products on the basis of their own requirements. Cater Allen's failure to comply with Part 2 of the Order effectively denies to its remaining unmigrated 25,000 account holders the benefits of Open Banking.
24. 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 Third 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 Third Implementation Plan;
- the CMA has decided to vary the 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 Third Implementation Plan set out in Annex 1. All references in the Directions to the Implementation Plan are to be read as references to the Third Implementation Plan.

2. New paragraphs 3.6 and 3.7 to be inserted stating:

3.6 “Santander will provide to the OBIE and the CMA a project plan by 1 April 2020 which includes a list of each action, deliverable and stage in the process of becoming compliant and will apply a deadline to all such actions, deliverables and stages such that meeting all such deadlines for these deliverables will ensure the critical path for Santander to meet the agreed date for becoming compliant with the Order set out in the Third Implementation Plan”.

3.7 “Santander is required to report to the OBIE and the CMA, on 15 April 2020 and thereafter every two weeks, on all actions, deliverables and stages that were due to be completed within that period, stating when they were completed and providing relevant evidence where appropriate”.

3. A consolidated version of the Directions is set out in Annex 2.

Annex 1: Third Implementation Plan (non-confidential version)

[see attached document]

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 3.3(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.
- 3.6 Santander will provide to the OBIE and the CMA a project plan by 1 April 2020 which includes a list of each action, deliverable and stage in the process of becoming compliant and will apply a deadline to all such actions, deliverables and stages such that meeting all such deadlines for these deliverables will ensure the critical path for Santander to meet the agreed date for becoming compliant with the Order set out in the Third Implementation Plan.
- 3.7 Santander is required to report to the OBIE and the CMA, on 15 April 2020 and thereafter every two weeks, on all actions, deliverables and stages that were due to be completed within that period, stating when they were completed and providing relevant evidence where appropriate.

Schedule 1: Third Implementation Plan (non-confidential version)
[see attached document]