

## **Directions to TSB Bank plc 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 (PCA) 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. On 2 February 2017 the CMA made the Retail Banking Market Investigation Order 2017 (the Order).<sup>1</sup> For the purposes of these Directions all terms unless expressly stated otherwise shall be as defined in the Order.
4. The integrated package of remedies in the Order contains, amongst others, a requirement for all providers of PCAs in GB and NI to enrol customers in a Programme of Alerts (the Alerts Remedy).
5. Part 6 of the Order provides for the Alerts Remedy. Specifically:
  - (a) Article 23 requires Providers to enrol all new and existing PCA customers into the Programme of Alerts, subject to certain exceptions;
  - (b) Article 24 sets out the timing for the alerts;

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<sup>1</sup> 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.

- (c) Article 25 sets out the content of the alerts;
  - (d) Article 26 requires Providers to take measures to collect customers' mobile phone numbers; and
  - (e) Article 27 requires selected Providers to cooperate fully with the FCA in a research programme.
6. Pursuant to Article 2.6 of the Order, Part 6 comes into force on 2 February 2018.
7. On 8 November 2017, 7 December 2017, 22 December 2017, 22 January 2018, 6 February 2018 and 21 February 2018, TSB Bank plc (TSB) updated the CMA on the progress it had made towards complying with Part 6 of the Order. TSB confirmed that it had (i) put in a place a process to manually enrol into its Programme of Alerts all new customers from 2 February 2018 and (ii) manually enrolled into its Programme of Alerts those existing customers most likely to incur unarranged overdraft fees and charges and unpaid item fees (Charges) on their account. However, it requested a delayed launch date in respect of Part 6 for a segment of existing customers since it would be unable to deliver the Programme of Alerts to this segment in full compliance with Articles 23 to 25 until Q3 2018.
8. The CMA and TSB have agreed an implementation plan setting out milestones to be met in achieving full compliance with Part 6 (the Implementation Plan). In the meantime, TSB has agreed to ensure that no customers are adversely affected by the delay in complying fully with Part 6, in particular that TSB will waive or refund the Charges for any customers who do not receive an alert on time and who incur such Charges before an alert is received.
9. Having taken into consideration:
- (a) the provision of the Implementation Plan setting out clear milestones to achieve full compliance with Part 6;
  - (b) the potential detriment to TSB's customers arising from non-compliance with Part 6 being mitigated by the Charge suppression strategy;
  - (c) TSB's:
    - (i) explanation for why it was not in a position to comply with Article 24 from 2 March 2018; and
    - (ii) engagement with the CMA to develop an appropriate implementation plan;

the CMA has decided to give directions to TSB.

10. On 23 January 2018 the CMA provided TSB with draft directions specifying and describing the steps to be taken by TSB for the purpose of securing future compliance with the Order.
11. The CMA has had regard to the representations received on the draft directions, and now issues the directions set out below (the Directions).

## **Directions issued under the Retail Banking Market Investigation Order 2017**

The CMA makes these Directions to TSB under Article 57 and Article 58 of the Order.

### **1. Duration**

- 1.1 These Directions come into force on 2 March 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 once it is satisfied TSB is compliant with Part 6 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 Part 6 of the Order and monitoring**

- 3.1 TSB shall comply with the Implementation Plan at Schedule 1.
- 3.2 Changes to the Implementation Plan may be:
  - (a) proposed by TSB in which case they will require approval by the CMA;  
or
  - (b) proposed by the CMA in which case they will require approval by TSB.
- 3.3 TSB shall provide to the CMA:
  - (a) a monthly statement which confirms ongoing compliance with the Implementation Plan and that TSB 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 month; 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 TSB

proposes to take to address the issues identified in such explanation. Such report shall be supported by evidence where relevant; and

- (c) all internal TSB reports presented to senior management and any other internal TSB reports or communications reasonably requested by the CMA concerning the progress of the project and / or risks arising to its delivery to the timetable set out in the Implementation Plan.
- 3.4 TSB shall provide to the CMA any information and assistance it reasonably requests to assess compliance with the Implementation Plan or Part 6 more generally.
4. **Actions specified with respect to avoiding detriment for adversely affected customers**
- 4.1 While these Directions remain in place, for any customer who incurs Charges without having been enrolled into TSB's Programme of Alerts in full compliance with Part 6:
- (a) TSB shall use reasonable endeavours to avoid any Charges incurred before the Alert has been received being debited from that customer's account or otherwise being taken; and
  - (b) TSB shall promptly refund any Charges that are incurred before the Alert has been received and debited from that customer's account or otherwise taken; and
  - (c) TSB shall manually enrol that customer into its Programme of Alerts.
- 4.2 TSB shall ensure that any of its staff who are likely to be contacted by customers are sufficiently briefed to be able to reassure customers that they will not be adversely affected financially by the delay in complying fully with Part 6.

# TSB Schedule 1 Implementation plan

