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By email only

From: Daniel Gordon
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Dear Charlotte

Clarification of definition of Variable Recurring Payments for Sweeping

In [July 2021](#), the CMA mandated the use of variable recurring payments (VRPs) as the mechanism for implementing sweeping under item A10 of the [Roadmap](#) (the July letter). In the July letter, the CMA also agreed that the OBIE's proposed definition of sweeping was appropriate:

- 1. The source account needs to be a personal current account (PCA) or business current account (BCA).*
- 2. The destination account is any account into which a domestic payment can be made by the payer's bank's direct channel.*
- 3. Both accounts are UK sterling accounts.*
- 4. The payments can be an unattended payment, not requiring any interaction by or presence of the payment service user at the time of making the payment.*
- 5. The transaction is between two accounts belonging to the same person or legal entity.*

During the OBIE's consultation on the standard version 3.1.9, concerns were raised by some stakeholders that there was some ambiguity in the above definition of sweeping, with differing stakeholder views as to whether certain use cases fell within or outside scope of the definition. At the December Implementation Entity Steering Group (IESG) meeting, the CMA committed to providing its views to the OBIE on these issues to help resolve any ambiguity.

VRPs for sweeping are an important mechanism which allow for the development of innovative products and services to help further open up competition in the retail

banking market and to benefit consumers. In reviewing the submissions provided to the OBIE earlier this year, we were encouraged by the range of ambitious use cases envisaged for VRPs by the industry and are confident that VRPs for sweeping will be an important step towards the realisation of many of these broader use cases – either through commercial arrangements or future regulatory intervention.¹

However, the CMA can only mandate access under the [Retail Banking Market Investigation Order 2017](#) (the Order) for use cases that constitute sweeping as envisaged by the [Retail Banking Market Investigation Final Report](#) (the Final Report), and which address the adverse effects on competition (AECs) and associated consumer detriment identified in the Final Report.² The scope of the market investigation and Final Report was set by the [Terms of Reference](#) for the market investigation.

Some stakeholders have submitted that sweeping destinations within item A10 of the Roadmap should be ‘use agnostic’ (ie sweeping to any destination account which fell within the above definition should be within scope of the Order). As noted above, the CMA can only mandate sweeping access which address the AECs and associated consumer detriment and therefore sweeping access cannot be mandated on a ‘use agnostic’ basis. Although the CMA recognises the potential benefits of having a wider application of VRPs and sweeping services more generally, to mandate sweeping in such a manner would be outside the scope of the CMA’s legal powers.

I set out below the CMA’s views on the objectives of sweeping as set out in the Final Report. I then consider the specific use cases identified in the submissions made to the OBIE by reference to those objectives, setting out the CMA’s views on which use cases fall within and outside of the approved definition of sweeping.

The objectives of sweeping as set out in the Final Report

The Open Banking remedy is part of the package of remedies designed to address the AECs identified in the Final Report.³ The objective of these remedies was to introduce competitive pressures on providers of personal current account (PCAs) including the provision of overdrafts, business current account (BCAs) and small and medium-sized enterprise (SME) lending products.⁴ The CMA considered that

¹ As set out in the CMA’s update of 5 November 2021, the implementation phase of the Roadmap is expected to be completed later this year and while the CMA will retain some regulatory powers for continuing obligations under the Order to ensure the maintenance of Open Banking standards, there will be a role for other regulators, such as the PSR and the FCA, in taking forward Open Banking.

² See section 11 of the Final Report.

³ The AECs are set out in section 11 of the Final Report.

⁴ In designing the remedies, the CMA sought to put in place dynamic benefits from increased competition which create more pressure on banks to develop products that benefit customers, including more incentives on providers to develop PCAs, BCAs and SME loans with charges and services which are clearer to, and valued by, customers. See Final Report, paragraph 11.23. See also paragraph 19.113.

competitive pressures would assist in addressing harm to customers who could benefit from current account and overdraft products with better terms by switching to other providers, or as a result of their existing provider having to respond to greater competitive pressures.⁵ The CMA also considered that these competitive pressures would facilitate other offerings from banks, such as increased quality of service.⁶ Open Banking and sweeping was designed to facilitate these competitive pressures.

Sweeping in particular was envisaged in the Final Report to facilitate the following elements of the Open Banking remedy:

- (a) **Increasing competition for overdraft customers and increasing the choice of credit products available through unbundling credit from the current account.** This may be through the development of products which monitor transactions and sweep funds between accounts and provide credit as an alternative to using an overdraft. Innovative money management tools to sweep funds between current accounts to avoid overdraft charges were also envisaged as a way to increase competition.⁷
- (b) **Help customers to make their balance work harder and encourage savings by increasing the interest they earn.** The CMA was clear in the Final Report that sweeping would encompass the automatic transfer of funds to other accounts to obtain higher interest⁸ and this was reiterated in the CMA's July letter. This was on the basis that automated sweeping could overcome customer inertia resulting in customers receiving a better return from higher interest rates than from a low or no interest current account which would increase pressure on current account providers to apply competitive interest rates on their current accounts.
- (c) **Facilitate current account switching** to products and/or providers which offer better value and, as a consequence, help customers obtain better terms from their existing providers.⁹

⁵ Final Report, paragraphs 11.25-11.27.

⁶ Final Report, paragraphs 19.108, 19.112, 19.114, 19.125.

⁷ Final Report paragraph 15.11.

⁸ Final Report paragraph 13.8 which states that the remedy may "overcome customer inertia by, for example, and with the customer's consent, automatically transferring cash from current accounts paying low or no interest to higher interest earning ones or transferring money into accounts that are about to go into overdraft". See also [Retail banking market investigation: Overview of final report](#), paragraph 32(b) which states that the remedy will "[a]llow customers to authorise the movement of funds between current and deposit accounts to help avoid overdraft charges or to benefit from higher interest payments".

⁹ Final Report paragraphs 14.82, 13.6(c), 19.105, 19.117.

Specific use cases within and outside of item A10 of the Roadmap

Reflecting the objectives of sweeping articulated in the Final Report, as set out above, we consider the following use cases are clearly within scope of sweeping under the Order and fall within the Roadmap:

- Sweeping between current account providers,¹⁰ including to move funds between current accounts to avoid falling into overdraft on another current account.¹¹
- Sweeping to destination accounts which are used for unbundling overdrafts from a current account and other alternative forms of credit that closely compete with overdrafts.¹²
- Sweeping to destination accounts which are used for loan¹³ repayments as part of a service that provides alternative forms of credit to an overdraft.¹⁴
- Sweeping to a credit card account.¹⁵
- Sweeping to cash savings accounts that are capable of paying interest.¹⁶

While the CMA is limited in its ability to mandate access to VRPs for sweeping to certain use cases that fall within the scope of the Order, the CMA recognises that there are a number of potential use cases for VRPs which may lead to more, innovative, use cases developing over time as the market evolves. We consider the following use cases are clearly outside the scope of the Order and fall outside of the Roadmap, although we support the further consideration and development of such use cases as Open Banking develops beyond the scope of the Order:

- Sweeping to make e-commerce purchases. This includes e-commerce whether directly or indirectly such as through an e-money “me-to-me-to-business” account, in order to purchase goods or pay for services.¹⁷ Nor is paying for goods or services, such as utility bills whether directly or through an e-money “me-to-me-to-business” account an activity that can be mandated within scope of sweeping under the Order. Facilitating e-commerce and the purchase of services

¹⁰ This falls within scope as part of the remedy which encourages competitive pressure on current account providers and can also facilitate switching (Final Report paragraph 14.82 and footnote 41).

¹¹ As set out in the Final Report paragraph 15.11.

¹² Sweeping is explicitly included in the Final Report to address overdrafts and allow the provision of alternative forms of credit (paragraphs 13.8(a), 15.11, 15.89(e)).

¹³ This however excludes mortgages and other secured loans.

¹⁴ As part of the ability to provide alternative credit facilities, sweeping to reduce borrowings is a valid destination account.

¹⁵ The Final Report considered credit cards as a method of alternative credit to overdrafts suitable for cash flow issues. See Final Report paragraphs 4.21, 4.31 4.72, 4.74(a), 7.21, 8.164, 8.165, 19.137.

¹⁶ The Final Report explicitly included sweeping to higher interest accounts as an example of overcoming customer inertia to make their current account work harder (paragraph 13.8(c)).

¹⁷ Facilitating e-commerce and the purchase of services and goods does not address the purpose of the remedy as set out above.

and goods does not address the purpose of the Open Banking remedy as set out above. Furthermore, as this is not a use case for sweeping when the CMA considered the issue of consumer protection when mandating VRPs for sweeping we did not consider whether there is sufficient consumer protection for funds swept using the “me-to-me-to-business” model.

- Sweeping to destination accounts used for the purchase of cryptocurrency and other similar assets.
- Sweeping in order to use online gambling and gaming services.
- Sweeping to destination accounts used for foreign exchange or international money transfer services.¹⁸

We recognise that there are two particular use cases where the assessment of whether they fall within scope of sweeping as envisaged by the Final Report is not clear-cut. We consider those to be:

- E-money accounts that are used by consumers and SMEs as substitutes for current accounts – we consider these to be within scope and reflective of the objectives of the Open Banking remedy as set out above.
- Investment products (including pensions) that may be used by consumers as alternatives to savings accounts – we consider these to be out of scope. For the avoidance of doubt, cash savings are included as noted above.

As reflected in the submissions made to the OBIE and reviewed by the CMA, a number of consumers use e-money accounts provided by “challenger banks” as substitutes for traditional current accounts. E-money accounts used in this way appear to achieve the objectives of the sweeping remedy by placing competitive pressure on traditional current accounts and encouraging switching. Accordingly, the CMA considers that e-money accounts used in this way are capable in principle of falling within scope of the definition of sweeping under the Order.

Certain investment products, such as pension products and stocks and shares ISAs, may also be used by some consumers as alternatives to savings accounts. It could be argued that these investment products achieve the objectives of sweeping under the Order, as they ‘help customers make their balance work harder’ by increasing the return on their balance. On the other hand, some submissions pointed to the differences between investment products and interest-bearing accounts, including with respect to the risk profile and the accessibility of the funds. We see significant potential benefits in VRPs to regulated savings products, such as pensions and

¹⁸ Sweeping to these destination accounts does not appear to facilitate any of the purposes of Open Banking and sweeping as set out above.

investment products. In particular, such functionality could encourage people to save more. We consider that pensions and investment products are not self-evidently substitutes for interest bearing accounts and accordingly, absent consideration of these use cases in the Final Report or July letter, on balance, we consider that such products fall outside the scope of the sweeping definition.

Next steps

On the basis of the above, and having discussed with you, we believe this provides the clarity necessary for the OBIE to take views on the specific use cases where the position was previously unclear. With respect to e-money accounts when used as current accounts, we ask that the OBIE further consider the implications of including e-money accounts when used as current accounts within the scope of sweeping, taking account of the CMA's steer above. In particular, we ask that the OBIE consider any potential unintended consequences of the inclusion of e-money accounts in this respect, and also keeps under review any material difficulties that arise from including e-money accounts, such as any difficulties delineating between the circumstances where an e-money account is used as a substitute for a current account, and the out-of-scope used cases set out above (such as e-commerce). The CMA is happy to provide further input and support as required.

I ask that you share this letter directly with the ecosystem and we will publish a copy on the CMA website shortly.

Yours sincerely

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