

COMPETITION AND MARKETS AUTHORITY**CONSULTATION ON
POTENTIAL REMEDY REVIEWS FOR 2023
30 JANUARY 2023**

Non-confidential response on behalf of Barclays Bank UK plc ("**Barclays**")

16 February 2023

Summary

1. Barclays is subject to a number of market investigation undertakings and orders¹ and welcomes the opportunity to comment on the CMA's consultation about the remedies it may review in 2023.
2. We note that the CMA's list of remedies which it proposes to review in 2023 does not contain any of the market investigation remedies in the financial services space, including the three sets of remedies to which Barclays is subject. We would encourage the CMA to reconsider whether this is appropriate, particularly given: (i) the longstanding nature of these remedies; (ii) the significant resource burden on firms; (iii) statements by the CMA as well as other regulators about the current state of competition in the retail banking sector; and (iv) more specific discussions in the context of Open Banking² in relation to review and revocation.
3. We also note that a specific future date for review of these remedies would provide legal certainty and demonstrate due oversight, particularly in advance of the introduction of any new CMA powers relating to remedies and enforcement. In addition to the CMA being required to keep all such remedies under review, it must surely prioritise those that have been flagged as now having a distortive impact on competition (such as Open Banking and the SME Undertakings).

RBMI Order

Open Banking

4. Given the difficulties caused by the current application of the RBMI Order in relation to Open Banking, and especially decisions taken by the CMA on funding, liability and cross subsidisation, [•].
5. We note however that based on its previous practice the CMA does not need to wait until the establishment of a new framework,³ but may carry out such a review once there is further clarity about the new legal obligations that would supersede those of the CMA.
6. In addition, the CMA and other regulators continue to make a number of statements about the increased competition in retail banking in the UK due to Open Banking (see Annex), which would point to that part of the Order needing to be reviewed. In the context of the CMA's duty to keep market investigation remedies under review⁴ and the findings and recommendations of the Baker review,⁵ the CMA should consider whether it is tenable to make such public statements about the significant positive impacts on competition of certain remedies, while also maintaining that a remedy review is not appropriate or necessary.

¹ The 2002 SME Banking Behavioural Undertakings ("**SME Undertakings**"), the PPI Market Investigation Order 2011 ("**PPI Order**") and the Retail Banking Market Investigation Order 2017 ("**RBMI Order**")

² Part 2 of the RBMI Order

³ See for example the CMA's consultation on Part 6 of the RBMI Order

⁴ Section 162 Enterprise Act 2002

⁵ See [Open Banking lessons learned review](#), which refers to the importance for complex remedies of "review at key stages to assess whether the existing arrangements are still working and are appropriate" (paragraph 116)

7. It is therefore clear that the CMA must carry out a review of Part 2 before the end of 2023 and we would welcome a public statement to this effect either by the CMA or as part of the JROC Q1 announcements.

General

8. Given the status of Open Banking as a cross-cutting foundation remedy, and its impact on competition in retail banking, in addition to new entry and other innovations, we consider that the CMA should make a commitment to review both the rest of the RBMI Order and the SME Undertakings (see further below) at the same time as or shortly after considering revocation of Part 2. Given the need for speedy resolution of the Open Banking issues, we would suggest these should form two separate consultations.

SME Undertakings

9. [•], we believe there is a very strong case to suggest that the now very old SME Undertakings are in need of review. We [•] both the CMA and FCA have recognised the considerable increase in competition in the retail banking sector since the introduction of the Undertakings over twenty years ago, and indeed the more recent statements on this topic made by the CMA since it responded to Barclays on this subject last year.
10. Such a review should be carried out at the latest alongside the review of the RBMI Order.

PPI Order

11. The market has changed significantly since the end of the market investigation in 2007[•]. We therefore consider that the CMA should not exclude the need for a review of the PPI Order in the coming year.

ANNEX**STATEMENTS BY CMA AND OTHERS ABOUT STATE OF COMPETITION IN RETAIL BANKING****CMA**

- *“Open Banking is widely recognised as a major success”; “It is fantastic to see how many consumers have benefited from Open Banking since the CMA’s Order was issued in 2017 – which has transformed the way millions of people manage their money”⁶*
- *Open Banking “has been a major success in improving competition in retail banking and securing positive outcomes for consumers and businesses”⁷*

OPEN BANKING IMPLEMENTATION TRUSTEE

- *“Open Banking has come a long way since the Competition and Markets Authority (CMA's) Retail Banking Market Investigation in 2016. Today, more than 6.5 million consumers and SMEs in the UK have been empowered to use innovative Open Banking-enabled products to better manage their money. The UK fintech sector has successfully leveraged Open Banking technology, contributing to our leadership in innovation and providing tangible benefits to consumer and businesses.”⁸*
- *“This has encouraged and resulted in significant competition and the creation of commercial opportunities through innovation, including propositions that help vulnerable users, particularly in the areas of mental health and overindebtedness.”⁹*
- *“This combined effort and collaboration is delivering better outcomes for consumers and SMEs across the UK”¹⁰*

JROC

- *“Open Banking has led to greater competition and innovation in UK retail banking. It has brought real benefits by allowing consumers and businesses to share their data with trusted third parties who can help them manage their money more easily.”¹¹*

OPEN BANKING STRATEGIC WORKING GROUP

- *“More than 6.5 million consumers and SMEs in the UK already use open banking-enabled products and services, contributing to UK leadership in the fintech sector, with UK citizens and businesses benefiting from increased competition, choice and innovation.”¹²*

⁶ See [CMA press release Millions of customers benefit as Open Banking reaches milestone](#), 12 January 2023

⁷ See [CMA Roadmap Completion Decision](#), 12 January 2023

⁸ See [Trustee End of Implementation Roadmap Report: Recommendations for the Future of Open Banking](#), 31 January 2023

⁹ Ibid

¹⁰ See [OBIE press release](#), 31 January 2023

¹¹ See [Joint statement by JROC on the future of Open Banking](#), 25 March 2022

¹² [The Future Development of Open Banking in the UK](#), Final report for the Joint Regulatory Oversight Committee, February 2023