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CMA RETAIL BANKING MARKET INVESTIGATION

Provisional decision on remedies

SUMMARY

On 17 May 2016, the Competition and Markets Authority (CMA) published its provisional decision on remedies in its retail banking market investigation. It also published provisional decisions in relation to the 2002 SME Banking Undertakings and the 2008 Northern Ireland PCA Order.

The CMA's proposals are intended to reform retail banking, to improve competition and get a better deal for customers of personal current accounts (PCAs) and banking services for small and medium enterprises (SMEs). The CMA intends to implement the package of measures soon after its final report is published in August 2016.

The proposed remedies are structured such that there are three cornerstone remedies (an open API banking standard, provision of service quality information, and customer prompts) and a further three areas of focus (current account switching measures, PCA overdraft measures, and additional SME banking measures). These are broadly in line with the CMA's previous proposed remedies, although there is now an increased focus on an open API (application programming interface) banking standard.

In many cases, the CMA's proposed timetable for implementation is likely to be challenging. As well as the upfront time and costs that will be required for the banks to implement the remedies, there will also be ongoing requirements to monitor compliance. However, not all of the proposed measures will apply to all banks and building societies; a number will only apply to the larger banks in Great Britain and Northern Ireland.

The CMA's provisional decision on remedies is open for consultation until 7 June 2016.

REMEDIES PACKAGE

The proposals largely follow the CMA's suggestions in its Notice of Possible Remedies and Supplementary Notice of Possible Remedies, issued in October 2015 and March 2016. The CMA has continued to focus on its "theory of harm 1", with the measures primarily being aimed at addressing barriers to searching for and switching to alternative providers, leading to low customer engagement.

The remedies package is less intrusive than it could have been – despite pressure from some sources, the CMA does not believe the evidence supports a break up of the larger banks. The CMA has also repeated its position that it has no intention of imposing account number portability or an end to free if in credit banking for PCAs.

The CMA views each remedy as part of a coherent package, with a number of linkages and reinforcement between individual remedies. Whilst the outcome of the market investigation will not be known until the CMA issues its final report (expected in August 2016), it is unlikely that the final remedies package will differ significantly from the CMA's provisional decision.

The package of remedy proposals consists of four elements:

- Three "foundation measures" which have the objectives of:
    - The development of an open API, by requiring the larger banks to make certain information available to customers and third parties, such as price comparison websites. This would allow consenting customers to share their data with intermediaries who can then offer tailored advice, thereby increasing competition and making it easier for customers to make comparisons.
    - Improving transparency and making better information available to customers by requiring banks to collect and publish data on service quality, as well as making this data available to third parties. Again, this will make it easier for customers to make comparisons between products and providers.
    - Increasing customer engagement via customer prompts, either periodically during the customer's relationship with the bank and/or when specific events occur (such as a material change to product features, branch closure, the imposition of overdraft charges, or the expiry of free banking for SMEs). The CMA recommends further research by the FCA to test event or situation based trigger points and periodic prompts, including the use of randomised controlled trials.

- Three further areas of focus:
  - Measures to make current account switching work even better, building on and improving CASS - amending CASS governance, extending CASS redirections, providing access to transaction histories, and targeted campaigns to improve customer awareness.
  - A set of interventions aimed at PCA overdraft users, a group of customers who suffer particularly from the competition failures in the PCA market - requiring PCA providers to introduce unarranged overdraft alerts, grace periods, and maximum monthly charges; and a review of the account opening and switching process.
  - Measures targeted at the specific and deep-seated problems in SME banking, making it easier for business customers to compare different providers and reducing the perceived advantage that incumbent banks have in the market for BCAs and SME loans - requiring loan rate transparency, offering a loan eligibility calculator, supporting the Nesta challenge prize for an SME comparison tool, standardising BCA opening procedures, sharing SME information, implementing 'soft' searching, and exploring the role of professional advisers.

Certain proposed remedies will only apply to some or all of the larger banks. These include requiring:

- The nine larger banks (RBSG, LBG, Barclays, HSBC, Santander, Nationwide, Danske, Bank of Ireland and AIB Group) to propose the design of, and fund, the development of an open API standard.
- RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG to develop a loan price and eligibility indicator tool.
- RBSG, LBG, Barclays, HSBCG, Santander, Danske, BoI and AIBG to support the Nesta challenge process for the creation of an SME comparison tool.

In contrast, other remedies will apply to all providers of PCAs, BCAs and/or SME loans, as appropriate.

The 2002 SME Banking Undertakings and the 2008 Northern Ireland PCA Order

The CMA is proposing to release the 2002 SME Banking Undertakings, with the exception of the bundling undertakings. The bundling undertakings will be retained as the CMA found that there remain strong linkages between BCAs and SME lending, with BCAs acting as a 'gateway' product. It also found there were information asymmetries between BCA providers and other lending providers, which favour the longer established banks. It is notable that the CMA is not proposing to extend the bundling undertakings so that they apply to any additional banks.

The CMA is also proposing that the 2008 NI PCA Order be revoked in its entirety, as the CMA considers the Order has been superseded by various market and regulatory developments and also the CMA's proposed remedies package.

IMPLEMENTATION

The CMA envisages using its legal powers to impose an Order to implement some of the measures. Implementation of these remedies is likely to follow a two stage process – the CMA will undertake consultations and then make a final Order within six months (extendable by four months) of publication of its final report; following which the parties subject to the Order must take the required action to comply.

Other measures could be implemented by the CMA accepting binding undertakings. The CMA expects to accept undertakings, where practicable, shortly after publication of its final report. The CMA expects that the majority of the proposed remedies will be in place within six months of the Order being made or undertakings being accepted.

For some of the proposals the CMA is recommending that implementation be done by other government departments (including HMT, BIS, the FCA and the PSR). It will be for those organisations to determine whether and how to implement the recommendations under their own (rather than the CMA's) powers. Ultimately, this could result in refinement and/or changes to the scope of these remedies.

The CMA's provisional decision also sets out measures for monitoring ongoing compliance with the proposed remedies. The CMA intends to require parties to submit compliance reports, although it is seeking views on whether there should be a de minimis threshold to exclude the smallest providers.

Given the long implementation timescales for some of the remedies, the CMA acknowledges that the overall package may take two to three years after publication of its final report to have a significant beneficial impact.

CALL TO ACTION

To discuss anything in this briefing, please contact Amanda Hulme or any of the team contacts below.

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