

Santander UK plc
CMA Retail Banking Market Investigation

**Response to invitation to comment on additional remedy
suggestions**

January 2016

Santander UK plc

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1 Executive Summary

- 1.1 On 20 November 2015, Santander UK plc (**San UK**) responded to the CMA's Provisional Findings dated 28 October 2015 and the Notice of Possible Remedies dated 22 October 2015 (**Notice of Possible Remedies**). References to a "Remedy" or "Remedies" in this submission refer to one or more of those remedies set out in the Notice of Possible Remedies. Since then we have participated in two hearings with the CMA.¹
- 1.2 As a scale challenger, we potentially have a significant amount to gain from improvements to competition in the market. This provides added motivation to assess how best to address the fundamental customer engagement issue which we have discussed in our earlier submissions.² As previously explained, while we consider that the CMA's proposed Remedies 1-5 will make incremental improvements to the customer switching journey to address this central issue, we do not believe there is any "silver bullet". However, we believe that, subject to our suggestions regarding their implementation, a core package of remedies focused on Remedies 1-5 represents the best means to achieve a well-functioning market.
- 1.3 While we understand the reasons for a number of the suggestions, and are supportive of steps to improve the customer journey and increase engagement, it is not clear to us how the proposals in the CMA's invitation to comment on additional remedy suggestions (**Invitation to Comment**) will lead to any (or any material) improvement to the market. Moreover, we are particularly concerned that the implementation of any remedy (or any other regulatory requirement) has a disproportionate costs burden on challengers.³ We would therefore encourage the CMA to remain focused on ensuring the effective implementation of a core remedy package and challenge the merits and demerits of any proposed additional remedy before requiring the diversion of further resources which would be better deployed on a core package. Moreover, those proposals which directly seek to control outcomes should be avoided.⁴ We set out our views in this respect in more detail in Section 2.

¹ A roundtable hearing on Tuesday 1 December with Barclays, HSBC and Nationwide (the **Roundtable**); and an individual hearing on Wednesday 9 December (the **Hearing**).

² See, for example, our discussion of this point in Section 5 of our Response to the Updated Issues Statement

³ This is because, to win customers, particularly when those customers are largely inert, we offer innovative and attractive service propositions, and to do so, we operate on finer margins than the incumbent big four banks. Our Net Interest Margin is 1.82%, while RBS', for example, is more than 3.5%. The CMA has also found that revenue per personal current account is higher for larger banks than for smaller banks. It is harder for challengers, including scale challengers, to find ways to accommodate increases in our cost base, in a way we do not consider to be comparable to the larger banks.

⁴ As Mr Garland, Director of Remedies, Business and Financial Analysis, put it at the Roundtable, "It is important to emphasise that we have put forward a package of remedies, a lot of them interact with each other and we think that the total effect would be greater than the sum of their parts."

- 1.4 As foreshadowed at the Hearing, we also provide evidence for our belief that intermediaries are fundamental to the effectiveness of any prompting remedy targeted at SMEs. This is covered in Section 3.⁵

2 Invitation to Comment

- 2.1 The Invitation to Comment contains a number of further suggestions from other respondents to the Provisional Findings as to possible remedies that the CMA should consider. In general, while we understand why some of these remedies have been suggested, we believe that these remedies risk distracting from the improvements to the switching journey which the CMA has put at the centre of its remedy package structure and which in our view are more likely than the additional remedies to drive improvements to competition in the market. Also, as noted above, and as the CMA recognised at the Hearing, a wide-ranging, unfocused raft of regulatory interventions would also be likely to have a disproportionately negative effect on smaller, challenger banks.
- 2.2 We do not in this submission analyse each proposal in the Invitation to Comment and the absence of a comment on any given proposal should not be interpreted as support for it.⁶ Instead, we make some general comments about the outcome-controlling remedies suggested, and contribute a few further points about certain other remedies.

Outcome-controlling remedies

- 2.3 The CMA has included in its Invitation to Comment remedies that seek to directly control outcomes, such as the proposal from **Which?** that banks' ability to determine their own overdraft charges should be curtailed; **Virgin's** proposal to require the payment of in-credit interest; and **RBS's** proposal to prohibit the provision of unarranged overdrafts without an opt-in declaration from the customer.⁷ We support measures designed to offer customers greater clarity and certainty around overdraft charging. Indeed, as indicated in previous submissions, we have greatly simplified our overdraft charging and product offering. As previously stated, our Basic and Choice accounts offer a way for customers to opt out of unarranged overdrafts.⁸ In the circumstances, while we understand the intent, we find it difficult to reconcile proposed

⁵ We will be providing separately to the CMA a paper dealing with the various regulatory issues discussed at our Hearing. These include the need for a fit-for-purpose governance framework in relation to Open APIs; the role of capital requirements as a barrier to expansion for banks; the disproportionate effect of the bank surcharge on challenger banks; and unintended consequences resulting from the implementation of ring fencing rules that may hinder competition.

⁶ We note, further, that the CMA does not consult on every proposal made by other respondents as to possible remedies. For example, **Nationwide** stated: "We feel that it is important that the CMA considers this issue and any additional remedies that may be appropriate (which may include revisiting the current proposal not to pursue structural remedies) given its potentially significant impact on the competitive landscape of the PCA market." We do not consider there is any persuasive argument for structural remedies, and the CMA has already explained that it is not minded to implement them. However, it would be helpful to understand the criteria for including or excluding suggested remedies from the invitation to comment, and what value judgment, if any, the CMA has applied. This is of particular interest as TSB's proposal to develop a credit passport in PCAs was included; but our proposal to develop a credit passport for SMEs was not. On this point, see further paragraph 2.13.

⁷ We do not have a full understanding of the RBS proposal, as it was not included in their published response to the Provisional Findings.

⁸ See our responses to questions 10, 15 and 34 of the PCA MQ in relation to these accounts.

mandatory charging structures across all PCA products, and the resulting sacrifice of product choice, with innovation and more effective competition.⁹

- 2.4 We also do not believe that any respondent has offered compelling reasons for the CMA to change its position that *“We have considered but are minded not to pursue further measures to control outcomes such as a remedy which would impose a price control on unarranged overdraft charges or which would create an obligation to offer minimum interest rates on outstanding balances in current accounts.”*¹⁰ We note that at the Roundtable, the Panel Chair Alasdair Smith explained the position of the CMA in relation to price controlling outcomes, recognising that *“most competition agencies have a presumption against getting involved in intrusive remedies.”*¹¹ We understand that this reflects the position in the CMA’s Market Investigation Guidelines that the CMA will not – in view of the risks associated with their effectiveness – generally use remedies that control outcomes unless other, more effective, remedies are not feasible or appropriate.¹²
- 2.5 The CMA had stated that it felt the original remedies package had *“the potential to address our competition concerns comprehensively at source without a significant risk of unintended consequences.”*¹³ In particular, these outcome-controlling remedies do not target the central issue of engagement and would, in the CMA’s own words, represent *“a high degree of intrusion into the relationship between banks and their customers [which] might have the effect of chilling product innovation.”*¹⁴ In our view, the more banks are compelled to offer certain combinations of products at certain price points, the more understandable and likely it would be for customers to conclude that all banks are the same, with knock-on adverse effects on engagement.
- 2.6 The CMA stated, in its Notice of Possible Remedies, that *“if we receive submissions that lead us to reassess the effectiveness, including the practicability, of the remedies we have proposed, we may need to reconsider measures to control outcomes.”*¹⁵ In its Invitation to Comment, the CMA noted that the submissions of **Which?** and the **Financial Services Consumer Panel** *“on the form of price controls”* had caused it to reconsider its views.¹⁶ However, we do not believe

⁹ We do not include here the **Financial Services Consumer Panel’s (FSCP)** “suggestion” that overdrafts be brought within the scope of the price cap on high-cost short-term credit. This is because the FSCP did not, in its written submission, make that suggestion. Rather, it wrote that the (dis)similarities between overdrafts and payday lending “merits closer examination”. We consider that this has been investigated by the CMA, in particular by question 24 of its PCA Questionnaire, which asked about overdrafts in relation to other forms of lending. Moreover, the FCA’s own work which imposed a price cap on high-cost short-term credit considered overdrafts and chose not to include them in the scope of the cap (see FCA Policy Statement 14/16 at, for example, paragraph 2.17 and page 24). In its work, the FCA recognised that the CMA would be considering overdrafts in this market investigation, which the CMA has done. Finally, the comments we make below that insufficient argument has been made to overturn the CMA’s starting point that price controls are inappropriate, and that price controls do not bear close relation to the AECs as found by the CMA, would in any event apply.

¹⁰ Notice of Possible Remedies, at paragraph 175.

¹¹ Alasdair Smith, the Panel Chair, said: *“I would imagine most competition agencies have a presumption against getting involved in intrusive remedies between suppliers and the customers unless there are fairly compelling reasons that we must do so. Here we felt that, first of all, we know there are some things going on in relation to overdraft charges, already some of which you have touched on: the fact that you are obliged to give people notice of overdraft charges and the measures that we are proposing here to increase competition, especially for current account customers with overdrafts, and our current judgement is that that is a more productive line to pursue than pursuing a price capping remedy for overdraft charges, which, among other things, might have the effect of discouraging supply, and might find customers in financial distress or find that an arranged overdraft has stopped being available to them.”*

¹² “Guidelines for market investigations: Their role, procedures, assessment and remedies” (CC3 (Revised)), April 2013, Annex B, paragraph 89.

¹³ Notice of Possible Remedies, at paragraph 176.

¹⁴ Notice of Possible Remedies, at paragraph 179.

¹⁵ Notice of Possible Remedies, at paragraph 176.

¹⁶ Invitation to Comment, at paragraph 7.

that submissions on a particular *form of price control* should lead the CMA to reconsider the *effectiveness of the original package of remedies*. Our view is that the submissions in relation to proposed price controls fail to provide any compelling argument as to the lack of effectiveness of the CMA's proposed remedies in stimulating competition. In addition, we do not believe such measures would be more effective than the more targeted remedy package which we would support as described in our response to the Provisional Findings.

- 2.7 More importantly, the submissions do not relate to the AECs as found by the CMA. The Which? response presents "*a package of additional remedies that focus on generating a shift in the way customers are treated.*"¹⁷ However, the AECs as described by the CMA (in relation to PCAs) did not suggest that there is mistreatment of customers. Instead, the CMA "*provisionally found that a combination of low customer engagement, barriers to searching and switching and incumbency advantages in the provision of PCAs in both GB and in NI is leading to AECs.*"¹⁸ This AEC is more effectively and proportionately addressed by the key package of remedies targeting engagement and switching as we discuss in our response to the Provisional Findings, in combination with encouraging intermediary engagement and providing a fit for purpose governance framework for Open APIs as we discussed in our Hearing.
- 2.8 We also have concerns in relation to **Virgin Money's** specific proposal that the CMA should introduce remedies that restrict any charges that are found to be excessive, unfair and/or regressive. If the CMA is unable to restrict such charges, Virgin Money suggests that banks should be required to pay credit interest on PCAs at or above a minimum level, and proposes that the CMA consider introducing a rule prohibiting banks from introducing new fees to offset these new costs. The CMA has not found excessive or unfair pricing.¹⁹ As mentioned above, we are not convinced that a price-controlling remedy would tackle the AECs found by the CMA.
- 2.9 In any event, we keep our overdraft pricing under review in line with our central proposition to be Simple, Personal and Fair. Introducing a requirement to pay credit interest is a back-door introduction of a price floor, as it imposes a price-related unavoidable cost for banks. We agree with the CMA's dismissal of price floors as "*not normally considered to be a means of increasing competition.*"²⁰ Forcing account providers to pay credit interest would limit our ability to provide different accounts to meet the different needs of our customers.

Other suggested remedies

- 2.10 The other remedies covered in the Invitation to Comment²¹ do not cause the same level of concern as to unintended consequences as those which seek to control pricing outcomes. However, we believe that some of the proposals represent a disproportionate level of intrusion into the relationship between banks and their customers.

¹⁷ Which? response to the CMA's Retail Banking Market Investigation provisional findings and possible remedies, 27 November 2015, at page 2.

¹⁸ Summary of Provisional Findings, at paragraph 64.

¹⁹ We note that overdraft charges have been challenged in the past in relation to their fairness, and were found not to be unfair, in *Office of Fair Trading v Abbey National plc and others* [2009] UKSC 6.

²⁰ Notice of Possible Remedies, paragraph 179.

²¹ The other Which? proposals; First Trust's suggested extension if the NI Order; LBG's additions to Remedy 1; TSB's proposed credit passport for PCAs.

- 2.11 The **LBG** suggestion would fall into this category. LBG considers there are customer benefits to be gained from additional prompts that promote not just switching to new providers, but changing behaviour and/or account type with existing providers. This could include mandating the use of overdraft text alerts and improved annual statements. We are not opposed to this in principle, and we already offer a suite of products designed to enable customers to best utilise their accounts, as a competitive differentiator of our service.²² While this is not a remedy that in our view is likely to materially improve competition, we would be supportive of its representing “best practice” for banks.
- 2.12 Similar comments apply in relation to **TSB’s** proposed monthly statement. While we understand that TSB’s suggestion is focused at overcoming inertia and providing customers with the knowledge they need to make good decisions, we do not believe that monthly statements are as helpful in meeting this objective as timed and targeted prompts. We also agree with the Panel Chair that excessive information risks increasing customer inertia.²³ We have previously suggested that annual statements would be an appropriate time to include a prompt for customers to consider their banking arrangements, and it remains our view that a prompting message in annual statements should be trialled.²⁴ In addition, the inclusion of both actual and notional charges (foregone interest/net interest benefit) would risk causing customer confusion, and as we have submitted before, we consider that it is difficult to accurately assess the level of foregone interest or net interest benefit. The monthly bill proposed by TSB uses a reference rate of 0.5%, but it is unclear on what basis that reference rate was chosen. It is also unclear who should set that reference rate, and how often it should be reviewed.
- 2.13 The other suggestion from **TSB** included in the Invitation to Comment is a credit passport for PCA customers. This appears similar to, but less sophisticated than, the credit passport we have suggested in relation to SME banking (and discussed at the Roundtable). We consider it an interesting idea to explore, as the customer switching journey may be improved by better credit decision making and also, in relation to overdrafts, a credit passport may result in better credit risk decisions. However, given that we and other banks are able to provide definitive overdraft decisions before proceeding to open an account for a customer, and are able to do so in a reasonable timeframe, we are unsure how a credit passport for PCA customers will address the issues the CMA found. As with some of the other suggestions, there is a risk that focussing on this suggestion may divert attention and resource away from other, more critical remedies. It remains our view that credit information is more complex and potentially more important for SMEs, in particular for SME lending, where the time required for a credit check for companies seeking finance at short notice can act as a significant barrier to switching. As per our previous submissions, we would therefore invite the CMA to consider further a credit passport initiative in SME banking.
- 2.14 We understand that the thinking behind the traffic light system proposed by **Tesco** may be to provide at-a-glance guidance on products. However, in considering how it would work, we

²² For example, our Spendlytics app which clearly and graphically shows card spend associated with an account divided by time period and/or by type of spend and text and email alerts highlighting payment details and balance levels.

²³ Alasdair Smith said: “Providing people with a bit of extra paper every month is not an effective way of changing behaviour” (“Chorus of criticism greets CMA banking probe”, FT article published on 22 October 2015, available at <http://www.ft.com/cms/s/0/0b530f88-78b9-11e5-a95a-27d368e1ddf7.html#axzz3vAPGT1qH>)

²⁴ See our Response to the Updated Issues Statement, at Section 5.

believe there are practical difficulties with implementation which give rise to a risk of unintended and poor customer outcomes, as well as risk of distraction from superior comparison tools available based on customers' own transactional histories such as Midata i.e. it could undermine Remedy 3. As a practical point, this additional remedy may prompt banks to compete to win "green" rankings on measures covered by the traffic light system, without in fact improving their proposition across the board. It could also incentivise offers at certain levels or to certain customers. As proposed it would not demonstrate the value of our 123 account to customers with high current account balances. It also does not include all the other benefits that accounts can offer – for example, cashback or customer service – and so may provide a misleading and falsely authoritative representation of whether an account is "good", "bad" or "indifferent".

- 2.15 The reality is that whether a bank's product is "good" or "bad" depends on a customer's personal and financial requirements and preferences relative to other comparable offerings, which change. This is quite different to say food products where the metrics are less variable, and so more amenable to a traffic light system. In circumstances where there is scope for the CMA to require banks to focus on the development of more sophisticated comparison tools, the time and effort to develop a traffic light system, and for a third party to monitor this, are likely to be disproportionate to the benefits such a system may bring. As such, our view is that the CMA should continue to focus on Remedy 3, rather than be distracted by this proposal.

3 Intermediaries' Role in Remedy 1

- 3.1 We have previously explained that intermediaries are key in influencing in the banking decisions made by SMEs.²⁵ We would draw the CMA's attention to the submissions of the Behavioural Insight Team on this point: that the effectiveness of prompts depends on the timing and the messenger, and so the role of trusted third parties is paramount.²⁶ Intermediaries, including accountants, trade bodies and software providers are trusted advisors or sources of information for many small businesses, and are often the first point of contact on financial matters. They have a thorough understanding of the company's business performance. Interactions with government agencies are unavoidable and SMEs trust those agencies. In the SME banking market, the identity of the individual recipient also matters: communications must reach the relevant decision maker. This only serves to emphasise the role of intermediaries, who, by engaging with SMEs at points when financial arrangements are being considered, are more likely to reach the key decision maker than a letter from a bank. In short, the most effective engagement with SMEs is likely to be through those interactions that already occur as part of the normal course of business.
- 3.2 However, as the CMA's own research shows, such intermediaries are currently reluctant to prompt SMEs to consider moving their banking arrangements.²⁷ We consider that addressing this issue is crucial to effectively addressing the AEC identified.
- 3.3 The reach of the intermediary network is significant:

²⁵ See our response to the Updated Issues Statement, at paragraphs 5.3 and 5.9; our response to the Provisional Findings, Annex 1, paragraph 1(f) and Annex 2, paragraph 1.1(c), and transcript of San UK's individual hearing.
²⁶ Response of the Behavioural Insights Team to the Notice of Possible Remedies, at page 10.
²⁷ SME Research, at paragraph 4.6.3.

- (a) The ICAEW has approximately 144,000 Chartered Accountants, looking after 1.5 million businesses. ACCA has 154,000 members, and ICAS in Scotland has 20,000 members. This compares to an estimated 10-12,000 banking relationship managers across the UK retail banking market.
 - (b) The greater use of accountancy software, such as Sage and Xero, mean that these platforms provide another way of communicating with SMEs at relevant points when they are considering financial matters. Over 800,000 UK companies use Sage and it has a relationship with 14,000 accountants. Xero only entered the UK market three years ago, but has rapidly grown to 100,000 small business subscribers.
 - (c) The reach of trade associations to their members is expansive. The Federation of Small Businesses (**FSB**) counts 200,000 small businesses as members; the British Chambers of Commerce (**BCC**) has 104,000 members; the Institute of Directors (**IoD**) has 35,000 members and the Forum of Private Businesses has 25,000 members. Notably, a number of these organisations have provided comments to the CMA in the course of this investigation, and appear willing to be involved in the evolution of the market. For example, the IoD argues that “consumer stakeholder groups” should be involved in the design of prompts;²⁸ and the BCC is keen to be engaged in further development of the Business Banking Insight website which it runs.²⁹
 - (d) In relation to public bodies, including HMRC, the .gov websites, and Companies House, the reach and scale is even greater. While these bodies are not “advisors”, they are trusted sources of information, and prompts from these bodies would carry great weight with SMEs. We note that the Ofgem pages of the .gov websites host information on switching energy supplier.³⁰ Businesses have to have accounts with Companies House and must file tax returns to HMRC. Moreover, the interactions with intermediaries, Companies House, and HMRC, and the use of accountancy software are likely to increase significantly as tax returns are digitised. This provides a great opportunity to prompt individuals and businesses on switching when they are doing their online returns.
- 3.4 We do not abrogate responsibility from banks themselves to prompt SME customers to consider switching. However, the CMA at this juncture has the opportunity to create truly effective prompts, and utilise the full business spectrum to support and encourage SMEs to consider switching. If the CMA wishes to see real improvements to competition in the SME market, it must engage with the role of intermediaries. As noted below, many of these intermediaries are keen to assist.
- 3.5 While we do not believe that the involvement of third parties is as necessary in relation to PCAs, we note that the Money Advice Service (**MAS**) (a government-created, independent advice service) has suggested that prompts to PCA customers should direct those customers to MAS.³¹ We consider this would be helpful, as long as the key messages from MAS were

²⁸ Response of the IoD, 20 November 2015, page 2.

²⁹ Response of the BCC to the Provisional Findings, page 2.

³⁰ See, for example, <https://www.ofgem.gov.uk/information-consumers/domestic-consumers/switching-your-energy-supplier>.

³¹ Response from the Money Advice Service 3 December 2015, paragraph 3.10.

consistent with the remedies the CMA is promoting (i.e. the utility of comparing accounts through Midata and the ease of switching through CASS).

- 3.6 At our Hearing, it was clear the CMA was interested to understand the precise steps it could take in respect of third parties to encourage or require their involvement in the customer switching journey.³² Indeed, as was demonstrated at our Roundtable, other banks who were initially reluctant for third parties to act as prompters (due to information sharing concerns) were persuaded that third parties could be an effective means to promote information about comparing and switching.³³
- 3.7 We believe that the relevant third parties are willing, and capable, to perform this role. This is demonstrated by the involvement of public bodies in the provision of information in energy switching; the submissions of business associations in this investigation; and the involvement of the trade bodies in other business finance related initiatives. For example, both the BCC and the FSB run the Business Banking Insight (BBI) survey in conjunction with the banking industry. The ICAEW produces an annual Business Finance Guide in conjunction with the British Business Bank and the British Banker's Association.³⁴ We would encourage the CMA to engage directly with these third parties, to determine their willingness to be involved in prompting and signposting and the most effective means to achieve it. In particular, we suggest the following possible actions will help address demand-side issues in SME banking:
- (a) In developing Remedy 2, on increasing public awareness of CASS and Midata, the CMA should mandate that a portion of that campaign is targeted at educating accountancy and trade bodies on the benefits of those two services, so that they in turn can educate SMEs. This would also help overcome the risk of advisers mistakenly recommending that SMEs "avoid the hassle" of switching.³⁵
 - (b) The CMA could at least recommend and possibly require the accountancy bodies to commit to and develop a joint voluntary code of practice (in conjunction with the banks) on switching. This code of practice could encourage their membership, as part of their annual financial reporting obligations, to ask SMEs when they last reviewed their banking arrangements and to explain - in a general, non-advisory way - the possible benefits of searching and switching and the ease of using CASS. It could also embed these practices in all appropriate training courses as part of their Continuing Professional Development.
 - (c) The CMA could recommend improving signposting to CASS from the accountancy bodies in their SME conversations, training, newsletters and their websites (banner ads and links to price comparison websites, or the Business Banking Insight website).

³² See the comments of Alasdair Smith at the Hearing, at transcript pages 11 and 12.

³³ For example, Barclays at the Roundtable said: "My instinctive reaction at first was to disagree with that statement. Now it has been described, I do not. When we come to talk about CASS awareness and how you would drive it, we would strongly advocate also that you have to use those APIs, you have to use accountants, you have to use solicitors, you have to use the big industry bodies etc. That is how you will reach the small business customer base. I would not perhaps use the word "prompt" in the same phrase but I think in the context you have just described, I completely agree."

³⁴ This publication does not currently cover switching.

³⁵ See fn.27 above.

(d) Finally, similar recommendations around signposting could be made to government agencies, trade associations and software providers.

3.8 We hope that these submissions are helpful. If the CMA would like to discuss any aspect in further detail, please do not hesitate to contact us.