

**LLOYDS  
BANKING  
GROUP**



**LLOYDS BANKING GROUP PLC**

**CMA RETAIL BANKING MARKET INVESTIGATION**

**Response to formal consultation on Draft Order**

19 DECEMBER 2016

## LLOYDS BANKING GROUP PLC

### Response to formal consultation on Draft Order

#### 1. EXECUTIVE SUMMARY

##### Introduction

- 1.1 This submission sets out LBG's comments in response to the CMA's formal consultation on the Draft Retail Banking Market Investigation Order 2017 ("**Draft Order**") and Draft Retail Banking Market Investigation Order 2017 Draft Explanatory Note ("**Draft Explanatory Note**"), both dated 23 November 2016. In order to assist the CMA, LBG has provided at Annexes 1 and 2 a mark-up of the Draft Order and Draft Explanatory Note to reflect certain of its comments. This submission should be read in conjunction with Annexes 1 and 2. Self-explanatory proposed amendments are not discussed in the commentary below.
- 1.2 LBG supports the CMA's remedies package, which will give PCA and SME customers the tools to compare Providers' products and the confidence to switch Provider if they wish to do so. Together, these remedies will transform how customers engage with the market and shop around for current accounts and SME lending. This will increase the existing pressure on Providers to innovate and to improve the price and quality of their products and services. These remedies will also catalyse technological innovation and the development of new business models.
- 1.3 The challenge for the CMA and the industry is now to ensure that in the detailed design and implementation of the remedies, these opportunities are realised and the associated benefits to customers are maximised. The CMA's proposed remedies package is likely to be challenging to deliver on time and costly for the industry to implement. It is therefore important that the detailed obligations imposed by the Final Order address the AECs effectively, but also do so proportionately, without imposing unnecessary costs and complexity (that could threaten timely delivery) on Providers.

##### Summary

- 1.4 LBG sets out below a summary of its key observations on the Draft Order and Draft Explanatory Note. Further detail in relation to each of these points is set out in the remainder of this submission:
- (a) **Customer satisfaction metrics:** The CMA's proposal is disproportionate and too prescriptive around display in digital channels.
    - (i) **Naming competitors in satisfaction metrics is disproportionate:** Naming competitors in the satisfaction metrics, as currently proposed by the CMA, transfers valuable commercial real estate to competitors as free advertising. This discriminates against Providers with branch networks, and may confuse and mislead customers, relative to providing customers with a simple unbranded comparison. There is no evidence that these additional costs are justified in terms of increased customer engagement.
    - (ii) **Post Office channel is not accounted for in satisfaction metrics remedy:** The Post Office branch service is an important and growing channel for business and personal current account customers of many Providers. But the requirement to display metrics will discriminate against Providers that do not use this channel, and will confuse customers that do. These concerns could be minimised by using metrics that do not name competitors.

- (iii) **Prominence of display in digital channels should be principle-based:** The CMA's proposal as to where satisfaction metrics should be displayed in digital channels is too prescriptive given differences between Providers and the evolution of website and app design. The CMA should use a more principle-based approach, as it has done for defining prominence in branches.
  - (iv) **Survey design must be robust:** Given the prominence that will be attached to the service quality surveys, it is essential that the survey method is robust, in particular, by ensuring a robust sample size in whatever method the CMA approves. LBG will work with the industry groups to develop a suitable proposal.
- (b) **Open Banking and "write access":** The CMA's January 2018 deadline aims to accelerate "write access", and adds significant cost and risk to the delivery of the Open Banking remedy. However, it will not accelerate the benefits for customers who will still need to wait for third party providers to develop services that can use "write access" functionality. The CMA should remove the deadline from the Order and allow the Implementation Trustee to develop the Agreed Timetable and Project Plan to minimise these risks, which would then be subject to approval by the CMA.
- (c) **Transaction history:** Some residual issues remain that require amendments to the Order and Explanatory Note:
- (i) there are practical and security-related considerations when it comes to providing transaction history to non-digitally-enabled customers on account closure: sending a large volume of highly confidential and sensitive transaction history information through the post or by email is not secure and risks increasing fraud on the customer's account: and making it available for download on account closure requires a multi-stage online customer ID verification process to protect from fraud risk. The simple solution is to grant Providers time to complete their own ID verification process before they grant download access to the data;
  - (ii) Article 20.3.1 does not require the provision of transaction history on account closure to customers who retain access to this information "on an ongoing basis after the relevant account is closed". This could be interpreted as a requirement for access to be maintained indefinitely. LBG has suggested a backstop period;
  - (iii) the exceptions to the obligation to provide transaction history on account closure should include where a switching customer has had the information transferred (to them or their new Provider) on closure of the relevant account, for example, as a result of any future enhancements to CASS. This would create a strong incentive for Providers and Bacs to make CASS-enhancing changes, such as to allow customers to choose whether or not they want transaction history on account closure. This is a more natural place to deal with the issue, at the right point in the customer journey. Customers could be asked, as part of the switching process, by their new Provider whether they want to take their transaction history with them when they switch;
  - (iv) the list of the scenarios in which the obligations to provide transaction data under both Articles 20 and 21 do not apply should be extended. LBG has identified additional examples; and

- (v) the ability for Providers to charge for transaction data after account closure should be amended to reflect the coming into force of the General Data Protection Regulation.
- (d) **The approach to ensuring prominence of SME comparison tools can be improved:** The Draft Order is prescriptive in requiring numerous hyperlinks to different SME comparison tools to be displayed on relevant product pages. This raises the following concerns:
  - (i) this will have negative consequences for customers, by displacing other important information;
  - (ii) there is a risk that the numerous hyperlinks required by the Draft Order crowd each other out, reducing engagement and potentially confusing and misdirecting customers (as customers would be unclear as to the purpose of each hyperlink);
  - (iii) there is insufficient space on the product pages to display hyperlinks to all third party comparison tools. As Providers' websites will be an important gateway for customers accessing such tools, there is an inevitable risk of competitive distortion, as links to some tools will be displayed more prominently than others (e.g. some above others), and other tools will not be displayed at all. The CMA should be aware, from its work on Digital Comparison tools and the Energy Market Investigation, of the importance of rankings in determining where customers click. Commercial comparison services bid competitively to secure top ranking on paid search for keywords. Providers may have perverse incentives in deciding which tools to display or face complaints from comparison services about where they appear; and
  - (iv) the inclusion of hyperlinks to Provider-selected tools will give some customers a false perception that the Provider endorses those comparison tools, while other customers may have less confidence in the independence of those tools.

The solution to these issues is to require Providers to include a prominent Johnson box on the relevant product page, which informs SME customers that comparison tools are available and prompts them to search for these tools themselves (e.g. on search engines, which requires minimal customer effort). If the CMA requires a hyperlink on the relevant product pages, then the Johnson box could link to an independent, industry-wide landing site (e.g. hosted by the BBA) which provides details of all qualifying comparison tools. But the CMA needs to be aware that any hosted site, even if run and hosted independently (e.g. by the BBA), will be prone to these problems and complaints from comparison services about where and how prominently they feature.

## 2. **PART 1 – GENERAL PROVISIONS AND DEFINITIONS**

### **Article 2 – Commencement**

- 2.1 As explained below, as regards Article 2.10 of the Draft Order, which relates to the commencement of Article 14 of the Draft Order, in conjunction with Article 10.6, the Explanatory Note should reflect the Final Report, paragraph 13.81, which explicitly recognised that *"the Implementation Trustee's mandate will therefore specify that although January 2018 remains the deadline for the agreement of the standards underpinning this element of the remedy, he or she may approach the CMA for agreement to a delay in the adoption and implementation of these standards if to do otherwise would*

*give rise to significant risks or inefficiencies arising from their lack of alignment with the PSD2 RTS".*

## **Article 5 – Exceptions to the application of the Order**

### **Scope**

- 2.2 As previously submitted to the CMA, LBG supports the principle that private banking should be excluded from the application of the Order and considers that the proposed exceptions provided by Articles 5.1 and 5.2 of the Draft Order will ensure that the remedies are effective and proportionate.
- 2.3 Similarly, LBG considers that the exception for special circumstances in Article 5.5 is necessary to ensure that the remedies are effective and proportionate. LBG considers that any increase to the investable assets threshold in Article 5.1, change to the scope of the determinations envisaged by Articles 5.2 or 5.5 (in particular any removal or narrowing of the contributing factors listed in Articles 5.4, 5.8 or 5.9), or the narrowing of the de minimis thresholds in Articles 5.6 or 5.3, are likely to qualify as material changes, triggering the requirement for further consultation.

### **Information required for the determinations under Articles 5.2 and 5.5**

- 2.4 At a meeting between the CMA and LBG on 5 December 2016, the CMA confirmed that it would set out in the final Explanatory Note to the Order the type of information that it would require from Providers in support of any application for determinations under Articles 5.2 or 5.5. LBG welcomes this proposal.

## **Article 9 - Interpretations**

- 2.5 The definition of "Business Overdraft" does not distinguish between secured and unsecured overdrafts. A further definition of "Unsecured Business Overdraft" is required to reflect the scope of the Part 8 and Part 9 remedies as set out in the Final Report, for the reasons explained below.
- 2.6 The definition of "Prominently" for the location of the price and eligibility tool, and links to SME banking comparison tools states "*... for the purpose of Part 9, Article 33.1 and Part 10, Articles 39.1.2, 40.1.2 and 41.7.2, that links must be no more than one click away from the business banking homepage and must be on the product or related pages for BCAs, standard tariff Overdrafts and Unsecured Loans*".
- 2.7 LBG considers that a prescriptive requirement is unnecessary and may create circumvention risks, as Providers' websites will be organised differently and the relevant product pages for SME BCAs, overdrafts and unsecured loans may not necessarily be one click away from the overall business banking homepage (which covers services to all businesses of all sizes, and which may be of limited relevance to SMEs and products within the scope of Parts 9 and 10). In order for the remedies to be effective and proportionate, it is sufficiently prominent to require:
- (a) a link to the Part 9 price and eligibility tool to be displayed on the relevant product pages; and
  - (b) display on the relevant product pages a Johnson box or a link to a landing site covering Part 10 comparison tools as a whole (as explained in Section 11 below).

### 3. PART 2 – OPEN API STANDARDS AND DATA SHARING

#### Article 12 - Release of product and reference information

- 3.1 LBG understands that the references to product prices and charges (in particular, interest rates) in Article 12.1.2(a)-(b) of the Draft Order relate to standard publicly available tariffs for SME lending products. This is the correct approach, as publication of negotiated rates would confuse customers, limit the effectiveness of the remedy, and would be disproportionate. Similarly, publishing Providers' highly confidential internal matrices or risk models explaining how interest rates vary according to customer characteristics would create significant competition law concerns.
- 3.2 LBG would suggest that paragraph 84 of the Draft Explanatory Note should include a clarification in relation to the timing of publication of SME lending rates: *"in respect of Article 12.1.2.b., the only SME lending interest rates that must be made available when Article 12 comes into effect are those which Providers already publish as at that date. For Providers that do not publish rates for SME lending products, the requirement to publish rates under Article 12 should reflect the requirement to publish representative APRs and EARs in Part 8 and should apply only from the date on which Providers are required to publish such representative rates under Part 8."*
- 3.3 An additional definition is required for Managed Loans in connection with the products that are identified as being outside the scope of Article 12.4.3, not least because it is not a definition recognised by LBG. The CMA should provide further details of the type of products that are intended to be covered by this exclusion.

#### Article 14 - Release of PCA and BCA transaction data sets

##### **"Read" and "write access" will transform customer experience**

- 3.4 LBG has strongly supported the CMA's development of an Open Data remedy throughout the investigation. "Read access" to customer transaction data will enable a suite of tools and services to be developed that will make it easier for customers to compare products and manage their finances, and will effectively and proportionately address the identified AEC. "Read access" enhances competition based on products that exist in the market today.
- 3.5 Open data "write access" also has the potential to transform banking services for many customers by introducing new products into the market, and it will be delivered through implementation of the Payment Services Directive 2 ("**PSD2**"). The CMA has included "write access" within the scope of the Open Data remedy and its delivery will therefore also be a task for the Implementation Entity and Trustee.

##### **The CMA's accelerated timetable for "write access" will not accelerate benefits for customers and introduces significant risk**

- 3.6 The CMA has set a very challenging deadline of January 2018, which will accelerate the delivery of "write access" by PCA and BCA providers. However, it will not accelerate the benefits for customers who will still need to wait for third party providers or payment initiation service providers ("**PISPs**") to develop services that can use "write access" functionality. The accelerated timetable will instead add increased risk and cost to successful delivery of both "read" and "write access".
- 3.7 The CMA should discuss its timetable with potential PISPs. These third parties will need to build and develop the new services that customers will actually use for "write access" to their PCA and BCA accounts. It will be hugely challenging for PISPs to launch these services by January 2018, and many will be unlikely to do so in advance of PSD2 regulatory technical standards coming into force, which will not be until Q4 2018. The

Implementation Trustee should have the flexibility to set a timetable that reflects what is required by these PISPs to deliver services to customers.

- 3.8 A January 2018 deadline therefore provides no benefits to customers during this accelerated period. However, by accelerating the timetable for "write access", significant risk will be introduced to the delivery of "read" access. Delivery of "read access" may be jeopardised as providers seek in parallel to meet the challenging "write access" timetable set out in the Draft Order. As "read access" is the capability that will facilitate the key aspects of the remedies (such as personalised price comparisons), this risk should be avoided.

**The CMA's accelerated timetable is likely to lead to misalignment with PSD2 and duplication costs for providers which are disproportionate to the benefits**

- 3.9 The Draft Order seeks to ensure alignment with PSD2, by specifying an implementation date of January 2018 for write access, which is when PSD2 will come into force. However, the technical standards underpinning PSD2 are being developed by the European Banking Association ("EBA") and will only come into effect 18 months after the European Commission has approved them. The EBA announced recently that *"there is considerable uncertainty as to whether we are able to maintain this speed until the transposition date of the PSD2 on 13 January 2018"*.<sup>1</sup> Accordingly, there is a material risk that the date specified in the Draft Order will not align with the delivery of write access through PSD2. Any misalignment between the implementation of the Final Order and PSD2 could have significant costs. Separate technical standards will need to be developed and delivered to meet the requirements of the Order, which could result in significant duplication of costs for both PCA and BCA Providers, and PISPs.

**Effective, rather than quick, delivery of "write access" is crucial for long-term success and sustainability of new services**

- 3.10 The entire Open Banking ecosystem is crucial to competition not just in PCA/BCA markets but in the future development of many related markets. The industry is mindful that it is not sufficient to introduce and activate the remedy – it is also necessary for customers actually to use it. "Write access" is the most sensitive aspect of Open Banking – any failure has the potential not only to cause customer harm, but to erode trust in the entire ecosystem and delay its benefits for years to come.
- 3.11 LBG understands that Article 10.6 gives the Implementation Trustee the flexibility to propose changes to the commencement date for write access (recognised in Article 2.10) and to the Agreed Timetable and Project Plan. This may allow for a more realistic timeline to emerge in due course. However, to include a deadline in the Order in the strong expectation that it will need to be changed to mitigate the risks and costs outlined above introduces unnecessary uncertainty.
- 3.12 Given the risks, a more realistic approach would be to remove the specific reference to the January 2018 implementation date for write access from the Order and instead allow the Implementation Trustee to develop the timetable for delivery in the Agreed Timetable and Project Plan, which would then be subject to approval by the CMA.

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<sup>1</sup> "EBA bends under weight of PSD2 mandates", Finextra, 7 December 2016.



#### 4. PART 3 – SERVICE QUALITY INDICATORS

##### Naming competitors in satisfaction displays

##### Facilitating non-price comparisons is critical to success of remedies

- 4.1 LBG aims to be the best bank for customers in terms of service quality, and has strongly supported the CMA throughout the investigation in seeking to make it easier for customers to compare both price and non-price factors between Providers. The CMA's remedies that aim to put more non-price information about Providers into the public domain are therefore welcome. The CMA's recommendation to the FCA to develop a list of internal performance metrics that will need to be published by all Providers is unprecedented, and will transform the ability of intermediaries, consumer groups and the media to help customers understand which providers offer the best service and quality. Alongside this, the CMA will require Providers to display prominently in branches and digital channels the results of customer satisfaction surveys. Although there are inherent problems with the accuracy of such surveys, this will prompt customers to give more consideration to the relative quality of different Providers' products.

##### Naming competitors in Provider's own channels is disproportionate and there is no evidence of increased engagement

- 4.2 LBG welcomes the additional customer research the CMA has conducted to assess how best to display service quality metrics to customers. Making sure that such remedies will have the desired effect is challenging and such research is an important component of successful design.
- 4.3 However, LBG is concerned about the conclusion the CMA has drawn. Whilst the qualitative research appears to show that customers prefer a display that names competitors, this is not the relevant question for the CMA. The CMA needs to make a judgment about whether the display of competitors is proportionate. This should balance the effectiveness of potential remedies against the relevant costs, whilst considering less onerous alternatives that do not list competitors.
- 4.4 However, the current proposed requirement to name competitors in customer satisfaction displays is disproportionate for the following reasons:
- (a) **Naming competitors transfers valuable commercial real estate to competitors, without any evidence of increased effectiveness in engaging customers:** Any Provider would pay a significant amount to be able to advertise their brand prominently on a competitor's prime real estate inside branches and in digital channels. The CMA's proposal forces all Providers (even those with the highest service quality) to transfer this value to competitors at huge cost which, for advertising posters in branches alone, may be of the order of £[CONFIDENTIAL] for LBG and between £25m to £45m across the industry.<sup>2</sup> This can only be justified if there is evidence that naming competitors has a strong incremental impact on customer engagement. No such supporting evidence has been provided, and the CMA's proposal is therefore highly disproportionate. Displaying these metrics without naming competitors removes this cost entirely without removing the prompt to consider satisfaction.
  - (b) **Naming competitors discriminates against Providers with branch networks (even if those Providers offer the highest service quality):** Branch-based Providers will be advertising competitors to all existing customers who visit their branches to undertake regular transactions and account management. Online-only

<sup>2</sup> Figures based on cost of £[CONFIDENTIAL] per week for displaying advertising posters in branches. Does not account for online advertising and other literature.



competitors will not provide this information to existing customers, as existing PCA and BCA customers tend not to visit Providers' public webpages for those products. There is a perverse incentive to discourage existing customers going into branches so as to minimise this disadvantage. As an example, Santander already uses the Post Office to provide its 'branch' service to its smaller SME customers and (it is understood) will therefore avoid showing these metrics to those SME customers given that those customers cannot use Santander's own branches.

- (c) **Naming competitors is more confusing and less relevant than a simple unbranded comparison:** Naming competitors will inevitably lead to unsuitable and irrelevant information being shown to many customers, with associated risk that it is seen as a recommendation. The Providers at the top of the lists may not be the right choice, or even a relevant choice, for individual customers, as illustrated below using existing satisfaction surveys. They may not offer branches or they may have product or pricing features that the customer does not like. For example, Providers like Metro Bank, Atom or Monzo either have no branches or have geographically limited branches. First Direct only offers a PCA for a monthly fee of £10, unless customers pay in £1,000 per month or maintain a £1,000 balance. These inappropriate or irrelevant brands when displayed by a competitor are confusing and not in the interest of customers who should be considering the overall offer including price and product, and not just satisfaction. Showing relative satisfaction scores without naming competitors removes this unintended consequence entirely.

**Figure 4.1: List of top 5 PCA and BCA Providers using existing satisfaction surveys**

Rank	PCA Provider	Exclusions/products	Rank	BCA Provider	Exclusions
1	First Direct	Online only; £10 per month for PCA	1	Handelsbanken	Does not target start-ups and newly formed businesses
2	Nationwide		2	Carter Allen	Only available to Ltd companies, partnerships and contractors
3	Metro Bank	Branches only in south-east	3	Metro Bank	Branches only in south-east
4	TSB		4	Santander	Does not serve customers in its own branches
5	Co-operative Bank		5	Co-operative Bank	Restrictions on sector served
TBC	Monzo	Mobile only			
TBC	Atom	Mobile only			

Source: GfK, "PCA Investigation", Table 1, April 2015. Source: Business Banking Insight, December 2016.

- 4.5 To balance these additional costs, the proposed remedy would need to be more effective at prompting customers than the alternatives that do not name competitors. This has not been demonstrated by the qualitative research nor has the CMA attempted to generate this evidence.
- 4.6 LBG's view is that an unnamed comparison will still effectively remedy the AECs by prompting customers whose Provider is below par. Such customers will then research and consider which Provider meets their own specific needs. Going further by naming and advertising competitors is disproportionately costly and risks unintended consequences with no evidence of any incremental benefit.
- 4.7 Further, all of the underlying data will be public and so making comparisons between Providers is best left to the market via the media, comparison tools and customer groups. Those competitors with the highest scores can also use their own paid-for advertising, and have every incentive to do so.
- 4.8 If the CMA decides in its Final Order that competitors should be named, then it should consider allowing the rankings to better reflect the channel used. For example, displays in

branches should only rank Providers with branches. It will also become even more critical that the methodology and sample sizes to be approved by the CMA are highly robust so as to ensure the validity of the rankings. LBG will work with the industry group to develop proposals for the survey methodology.

**The CMA does not account for the Post Office channel**

- 4.9 The Post Office provides branch banking services to many different Providers, as an alternative to using a Provider's own branch network. This channel is increasingly used by many business and personal current account customers, as Providers reduce branch networks. For example, around **[CONFIDENTIAL]** of LBG's customers use the Post Office and Atom Bank's customers will eventually be able to use Post Office branches for physical services, such as cash deposits.
- 4.10 Despite the importance of the Post Office channel, the CMA fails to take account of the Post Office in a number of ways:
- (a) it would be discriminatory and disproportionate to require some Providers to advertise competitors in their own branch and digital channels, while not applying this remedy to other Providers that use third party branch channels. It would also create perverse incentives, such as encouraging reductions in branch traffic or the withdrawal of some branch services. The issue of discrimination in relation to Post Office branch services is avoided if the display of posters does not name competitors;
  - (b) some Providers do not offer branch services in their own branches, such as Santander which serves its smaller business customers in Post Office branches. This will cause confusion for customers. For example, it would mean that:
    - (i) smaller Santander business customers will not see these metrics when they use their Post Office branch. (Neither would Atom's PCA customers - who will eventually be able to use Post Office branches for physical services - be able to see their Provider ranked in the only physical location where they receive counter services, should Atom grow to meet the relevant de minimis threshold);
    - (ii) the posters displayed in Santander branches will not be seen by smaller business customers; and
    - (iii) the branch satisfaction metric (Article 15.2.4) shown in Santander branches will refer to a branch service that is provided elsewhere.

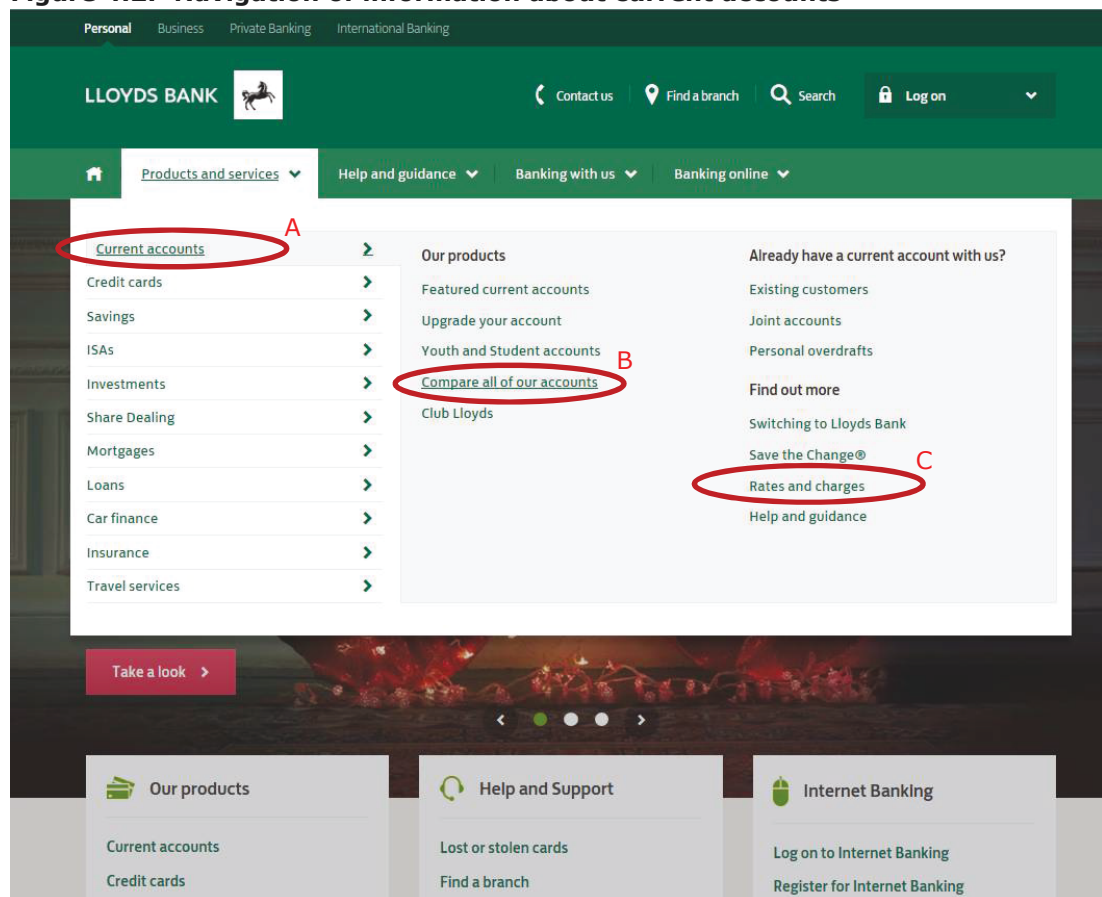
LBG is not suggesting that it would be appropriate to require the Post Office to display posters showing other Providers' current account performance, but simply makes the point to show the inconsistencies and perverse outcomes that a requirement to display posters in branch would entail; and

- (c) the Post Office is a PCA Provider, and may be required to display PCA satisfaction metrics if it exceeds the de minimis criteria. These posters would show satisfaction for the "Post Office". It will not be clear to customers of other brands whether this refers to the Post Office postal counter service; the Post Office bank branch service offered to customers of other Providers; or the overall service provided to Post Office PCA customers, which will not be relevant to them. The display should clearly refer to "Post Office Current Account".

### Service quality displays on websites and mobile banking

- 4.11 Given the importance of digital banking, the satisfaction metrics should be displayed in this channel (subject to those points about naming competitors above). However, the CMA's current proposal for the placement of this information is too prescriptive and should instead be based on a guiding principle.
- 4.12 Providers can design webpages and mobile applications in different ways. There may not be clearly identifiable personal, business, PCA or BCA pages. Even if there are, customers may tend to use some pages, but not others. Customers may use drop-down menus to go straight to key information, rather than navigate sequentially through a hierarchy of pages. For example, a customer landing on the main personal banking home page for Lloyds Bank looking for information on PCAs, is likely to navigate using the drop-down menu and may choose to go straight to a specific area of the site comparing products (option B in the figure below) or look at rates and charges (option C) rather than visit the main PCA page (option A). A more prominent reference to the service quality information may be within this drop-down menu rather than on the PCA page (option A). As websites and mobile applications evolve and innovate, new ways to navigate pages may emerge.

**Figure 4.2: Navigation of information about current accounts**



- 4.13 The CMA should therefore avoid being prescriptive about the placement of the service quality information. The Draft Order should be amended to set a clear principle for where information should be provided which allows for different website design and structures, which is the same approach as the CMA has adopted for prominent display in branches. For example Article 17.1.3 could state that for the PCA metrics: *"Providers should publish...on the Brand's website...(a) Prominent links to the service quality indicators set out in Article 15.1 on a page of the Brand's website that is likely to be accessed by existing or potential customers seeking information on the Brand's PCAs"*.

- 4.14 If the CMA adopts a more prescriptive requirement as currently proposed in the Draft Order, then the requirements should be proportionate and avoid customer confusion. Article 17.1.3(a) requires publication "*on the main personal banking page*" and Article 17.1.3(b) on the "*main business banking page*". This could be interpreted as requiring publication on pages covering all personal and business banking products, which could include current accounts as well as savings, credit cards, mortgages or business loans. These other products are out of scope of the remedies, and the surveys will not refer to these other products. Article 17.1.3 should be amended to refer explicitly to "PCA" or "BCA" pages, subject to the points above that such pages may not be clearly identifiable and a principle-based approach to determining prominence is more appropriate. This would be consistent with paragraph 43 of the Draft Explanatory Note, which states that the service metrics should be placed "*no more than one click away from the home page, for example, on the PCA or BCA specific page of the website.*"

### Integration of the display into web pages

- 4.15 LBG's interpretation of Article 17.3 and Schedule 2 of the Draft Explanatory Note is that Providers will be able to design the infographic so that it is consistent with the associated webpage, whilst still providing the required information and format.

### Prominence of the display in branches

- 4.16 Paragraph 42 of the Draft Explanatory Note allows for digital display in branches, which is sensible and necessary given the investment that will be made in branch design and appearance in future. It would help to clarify what the following paragraph means in terms of digital display: "*Overall where the information is to be displayed in the branch we think it unlikely that anything less than A2 size for a poster, or a similarly prominent digital display, would be prominent*".

### Survey and methodology design

- 4.17 Given the prominence that will be attached to the service quality surveys, it is critical that the survey method is robust, in particular, by ensuring a robust sample size in whatever method the CMA approves.
- 4.18 The CMA has noted in the Draft Explanatory Note a preference for face-to-face and telephone surveys and states that it has "*very significant concerns about the use of online surveys*". LBG recognises that online surveys have the potential to risk excluding some groups of customers. However, online surveys will be a cost-effective way of reaching most customers and producing reasonably representative results. It is also not the case that face-to-face and telephone surveys are more representative or accurate, given unwanted call blocking services and declining usage of fixed lines. Where there is a risk of excluding certain groups, this should be addressed in the survey design, but should not mean a disproportionate cost is imposed by entirely abandoning online surveys.
- 4.19 LBG will work with the industry-groups for the PCA and BCA surveys to put forward proposals to deliver relatively robust survey results.

## 5. PART 4 – PROMPTS

- 5.1 LBG has no comments on this Part of the Draft Order.

## 6. PART 5 – TRANSACTION HISTORY

- 6.1 LBG supports the principle of making transaction history available to customers who require that information, and welcomes many of the improvements and clarifications the CMA has made to the Draft Order since the informal consultation of October. However, as currently drafted, parts of the Draft Order raise potential security and fraud issues

(regardless of the format in which the data sharing takes place), as well as other issues which may not be optimal for customers.

### Digitally-enabled and non-digitally-enabled customers

- 6.2 LBG welcomes the amendment to Part 5 which clarifies that the requirement to provide transaction data in relation to both the provision of transaction history at account closure (Article 20) and the provision of payment transaction history up to five years after account closure (Article 21) can also be met where that data is made available to customers for electronic download. This provides an efficient solution for making transaction history available for download by existing digitally-enabled customers - the data can be made available by Providers keeping aspects of those customers' online banking services open for a period after account closure.
- 6.3 However, there are practical and security-related considerations when it comes to non-digitally-enabled customers who close their accounts. In such cases, as currently worded, the Draft Order would effectively require LBG either: (a) to ask such non-digitally-enabled customers to engage in a multi-stage online ID verification process in order to establish a secure means of transferring the data and to protect from fraud risk; or (b) to send these customers a large volume of highly confidential and sensitive transaction history information through the post.<sup>3</sup> Both have their own relevant considerations:
- (a) **Security issues:** Whilst it may be technically possible for some Providers, including LBG, to grant non-digitally-enabled leaving customers digital access to their transaction history, this is likely to require setting up the customer with a digital account, and/or the provision of a unique digital ID via a "portal". Either scenario would require the customer to register for a unique account and log in with a username, and to activate the account by completing some form of security process. Requiring that non-digitally-enabled customers undergo this verification as part of their account closure process (simply in order to grant them access to historic transaction data which they may not even want) may confuse and frustrate customers. The Provider may therefore be forced to consider sending the transaction history by post, which raises the concerns set out below.
  - (b) **Transaction History through the post or email:** The Draft Order requires five years of transaction data to be provided at account closure if customers do not opt-out. As previously submitted,<sup>4</sup> this will result in a large amount of data (in many cases in excess of 200 pages for PCAs) being posted<sup>5</sup> on an unsolicited basis. In the context of BCA customers, which generally engage in materially more transactions than personal customers, the relevant transaction history may span to over 1,000 pages. Data of this type is too sensitive (and large) to be transmitted by email. If sent by post, whilst some customers may be aware of the details of this CMA requirement, there will be a significant number of customers who will not and may ask why they have received such a large amount of paper. A number of customers may also be concerned about such a large volume of personal/company sensitive data being sent to them without their involvement and may not welcome this, in particular, given the notable risks if third parties fraudulently intercept a customer's post or email or if they have recently changed their address but not updated their previous Provider by that point. The situation is compounded by the fact that, as previously submitted to the CMA, for customers switching current

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<sup>3</sup> As set out in paragraph 6.6 of LBG's Response to informal consultation on Draft Order, 31 October 2016, data of this type is too sensitive (and large) to be transmitted by email.

<sup>4</sup> LBG's Response to informal consultation on Draft Order, 31 October 2016.

<sup>5</sup> As set out in paragraph 6.6 of LBG's Response to informal consultation on Draft Order, 31 October 2016, data of this type is too sensitive (and large) to be transmitted by email.

accounts through CASS, the current automated CASS process offers no opportunity for a customer to opt-out of receiving this information.

6.4 LBG proposes the following simple solution:

- (a) **In relation to digitally-enabled customers**, customers will retain access to their historic transaction data by download through their current digital banking log in details. In such cases, the exception under Article 20.3.1 would apply; and
- (b) **In relation to non-digitally-enabled customers**, the Draft Order and Draft Explanatory Note are amended to permit Providers to conduct reasonable identification assessments before they make the information available for download in electronic format. This will permit Providers to meet the requirements of the Order by writing to customers who do not fall under Article 20.3.1 (e.g. customers without existing digital access to their accounts) to notify them of how to download this information. The time limit for providing the customer access to the data should then start to run from the time the customer has complied with the Provider's identification requirements.<sup>6</sup> In this regard, the ability to conduct such verification prior to disclosing the information is entirely reasonable (and necessary) in the context of the CMA having already accepted that Providers can meet the Article 20 requirement by making transaction history available for download. This simple solution can be accommodated in the Order by amending either Article 20.5 or Article 20.6 to reflect the same principle (wording for both proposals have been included in the attached mark-up of the Order in square brackets):

- (i) amending Article 20.5 as follows to more closely reflect Article 21.4:

*20.5 The Payment Transaction History to be provided under this Article 20 shall be provided within a reasonable period which shall be no later than:*

*20.5.1 seven Working Days from the date the customer has closed their account and complied with the reasonable identification requirements of the Provider in respect of 95% of account closures in any 12 month period; and*

*20.5.2 40 days from the date the customer has closed its account and complied with the reasonable identification requirements of the Provider in respect of all other account closures; or*

- (ii) amending Article 20.6 as follows to reflect the same principle:

*20.6 For the purpose of this Part 5, in the context of the provision of the Payment Transaction History in electronic format, the word 'provide' includes making it available for download by the customer. In such instances the Provider must notify the customer of how to download this information within the time periods set out in Article 20.5 and make it available for download no later than:*

*20.6.1 seven Working Days from the date the customer has closed their account and complied with the reasonable*

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<sup>6</sup> It would be inappropriate for the seven day time period to commence on account closure in the case of customers not covered by Article 20.3.1 (e.g. customers without existing digital access) given that the speed the relevant security checks take place are partly dependent on the customer providing relevant information, which is out of the control of the Provider.



*identification requirements of the Provider in respect of 95% of account closures in any 12 month period; and*

*20.6.2 40 days from the date the customer has closed its account and complied with the reasonable identification requirements of the Provider in respect of all other account closures.*

- 6.5 In addition, where a Provider has written to a customer to notify them of how to download their transaction history (pursuant to Article 20.6), the steps set out in the notification must remain available to the customer for 30 days. This is to avoid the obligation to keep the information available for download indefinitely (which may present security risks and would be disproportionate), and to avoid overlap with Article 21.<sup>7</sup> Providers may, however, wish to use this written notice to inform the customer of their right to obtain historic transaction history under Article 21.

### "Future-proofing" the Order and incentivising enhancements to CASS

- 6.6 The Final Report recognises that a well-functioning CASS is a key part of improving the retail banking system, so much so that many of the CMA's remedies are focused exclusively on CASS. These include the measures to improve the governance of CASS and the awareness and confidence of CASS. In this connection, LBG expects CASS to play an increasingly important and dynamic role in the market. This should be reflected in Part 5 of the Order.
- 6.7 As currently designed, CASS does not port a customer's transaction history to the new Provider when the customer switches. This, however, may become a feature of CASS in the near future. Providers, such as LBG, already intend to take steps to work with Bacs to encourage the development of such a feature which could also, for example, allow customers to opt-out of receiving transaction history on account closure should they wish. This is a more natural place to deal with the transaction history issue, at the right point in the customer journey.
- 6.8 In this context, as a means of "future-proofing" Part 5 of the Order so that the obligation to provide transaction history on account closure does not apply to scenarios where it would be unnecessary and therefore disproportionate, LBG submits that the Article 20.3 exceptions to the obligation should include where a switching customer has had the information transferred to them (or to their new Provider) on closure of the relevant account. This could be as a result of any future enhancements to CASS, for example, or another industry development. The attached Draft Order and Draft Explanatory Note have been marked-up accordingly.
- 6.9 Amending the Order in this way will create a positive incentive for Providers and Bacs to make these CASS-enhancing changes which should further promote the attractiveness of the CASS service to customers.

### Improvements to the Draft Order welcomed by LBG and additional enhancements

- 6.10 LBG welcomes that the Draft Order now incorporates the following features in Part 5:
- (a) **Make available for download:** LBG welcomes that Article 20.6 now clarifies that the requirement to "provide" transaction data in relation to both the provision of transaction history at account closure (Article 20) and the provision of payment transaction history up to five years after account closure (Article 21) can, in the

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<sup>7</sup> A customer would remain able to subsequently request transaction history data under Article 21.



context of data in electronic format, also be met where that data is made available to customers for download;

- (b) **Through APIs:** Articles 20.4 and 21.5 now clarify that the requirement to "provide" transaction data can be met through paper or electronic form, including through giving access via an API. This allows the Order to remain flexible enough for API-based solutions to emerge;
- (c) **Access on an "ongoing basis":** Article 20.3.1 does not require the provision of transaction history on account closure to customers which retain access to this information "*on an ongoing basis after the relevant account is closed*". This is an essential part of the Order, as it would be disproportionate to send transaction histories to customers in hard copy or electronically if the former customer remains able to obtain them. Article 20.3.1 also reduces the potential for fraud and other data security issues surrounding the unsolicited transmission of voluminous sensitive information. However, as a customer has the right to request transaction history after he has closed his account (under Article 21), it is not proportionate or necessary for a Provider to maintain customer access to transaction data in the way envisaged by Article 20.3.1 indefinitely - this would impose unnecessary costs in relation to maintaining access and related security measures. LBG submits that maintaining customer access for 14 days should be more than sufficient for these purposes. Article 20.3.1 of the Draft Order has been amended accordingly. In addition, it should be clarified that the exception under Article 20.3.1 only applies to cases where the continued access is online access. This would clarify that the exception cannot be met by customers having access simply by virtue of their rights under Article 21, which would apply to all Providers automatically;
- (d) **Exceptions for certain account closures:** As part of its response to the CMA's informal consultation, LBG submitted that it would be inappropriate for the requirements in relation to both the provision of transaction history at account closure (Article 20) and the provision of payment transaction history up to five years after account closure (Article 21) to apply automatically in all cases. In this regard, whilst the CMA has incorporated some of these exceptions in Article 20.3.2,<sup>8</sup> LBG submits that:
  - (i) the Draft Order should be amended to exclude the following additional cases from the Article 20 requirement to provide transaction data on account closure on the basis that such accounts are not relevant to the switching AECs identified in the Final Report:
    - (A) where the account is a client/trustee account, ie. the money is held on behalf of numerous beneficiaries and not in the name of, or for the benefit of, a single customer. This should also be excluded from the Article 21 requirement. The Draft Order has been amended accordingly; and
    - (B) in the case of BCAs, where the account was closed due to the bankruptcy, insolvency or liquidation (as appropriate) of the account holder or the account holder's business or the business has closed for other reasons not already listed above (such as retirement of the account holder). Whilst the account holder may still benefit from transaction history data in certain circumstances, this is unlikely to be the case in many circumstances and, in any event, the Order does

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<sup>8</sup> i.e. where a PCA or BCA is closed due to (a) fraud or other unlawful activity; (b) the death of the account holder; (c) impairment; or (d) the account being dormant such that there has been no payment transactions in the past five years.

not preclude the account holder from specifically requesting access to this data. The Draft Order has been amended accordingly;

- (ii) the "*fraud or other unlawful activity*" exception referred to in Article 20.3.2(a) should also apply as an exception to the Article 21 *Provision of payment transaction history up to five years after account closure* requirement. It would be inappropriate for the obligation to apply in these circumstances. The Draft Order has been amended accordingly; and
- (e) **Multi-party accounts:** On the basis that Article 20 provides for Payment Transaction Histories to be provided at account rather than customer level,<sup>9</sup> LBG submits that the Order, or Explanatory Note, clarify that the obligation under Article 20 does not apply to multi-party accounts where only one of the account holders (e.g. a joint PCA account holder, or a BCA joint signatory) leaves the account, but the account remains open for the benefit of the other account holder(s). The Draft Explanatory Note has been amended accordingly.

### Other changes/points of clarification

- 6.11 **Executors and those holding power of attorney:** Article 21.1 has been amended to confirm that the obligation to provide Payment Transaction History after account closure also applies to requests made by executors and those holding power of attorney as such transaction data may be relevant for the purposes of their duties.
- 6.12 **Collection from branches under Article 21:** The Draft Explanatory Note should be amended to clarify that the requirement under Article 21 can be met by a Provider making available for collection the requested Payment Transaction History in a Provider's branches from which the customer could service their account prior to account closure.
- 6.13 **Charging for transaction data:** LBG notes that Article 21.3 permits Providers to charge for the provision of transaction history data which is requested after account closure. The maximum fee is £10 (the current fee payable under section 7 of the Data Protection Act). However, the Data Protection Act ("**DPA**") will fall away when the General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**") comes into force in May 2018. At that point certain transaction data may have to be provided free of charge, subject to the exceptions under the GDPR. In this connection, LBG submits that the Order and Explanatory Note should clarify that when the GDPR comes into force:
  - (a) any charges for transaction history data which would fall under the GDPR must be in accordance with the GDPR; and
  - (b) where the transactional data requested does not fall under the GDPR (because, for example, it is not personal data such in the case for BCA transactional data<sup>10</sup>), Providers would be able to charge a fee no greater than would be payable under section 7 of the Data Protection Act on the day before its repeal (or £10). This fee should be indexed so that it can increase over time.

## 7. PART 6 – AUTOMATIC ENROLMENT INTO UNARRANGED OVERDRAFT ALERTS

- 7.1 LBG welcomes the clarifications made to this Part of the Order since the informal consultation of October.
- 7.2 The Draft Explanatory Note paragraph 70 clarifies that "*it may be that, in accordance with Article 24.4.2, the Alert is sent on the day after the Alert trigger. Such customers may not*

<sup>9</sup> Clarified in paragraph 53 of the Draft Explanatory Note.

<sup>10</sup> Whether a request for BCA transaction history data would fall within the GDPR would need to be determined by the Provider on a case-by-case basis depending on how the BCA was used.

*be able to avoid charges incurred in the previous day but should be informed that if they act by a specific time they will be able to avoid any further charges".*

- 7.3 To avoid uncertainty, this clarification should be reflected in the Order as an amendment to Article 24.4.: *"The Provider shall use reasonable endeavours to ensure the Alert is capable of being received as soon as possible after the Alert Trigger, but for the avoidance of doubt this may mean that in certain circumstances the Alert is sent on the day after the Alert Trigger."*

## 8. **PART 7 – MONTHLY MAXIMUM CHARGE**

- 8.1 LBG has no comments on this Part of the Draft Order.

## 9. **PART 8 – PUBLICATION OF RATES FOR SME LENDING PRODUCTS**

- 9.1 Consistent with the Final Report, Part 8 should not apply to secured overdrafts. As explained in the Final Report:

- (a) *"we have decided to make an Order requiring all lenders that provide unsecured loans and overdrafts to SMEs to display on their websites rates showing the cost of these products up to the value of £25,000" (Figure 16.1); and*
- (b) *"we are therefore not requiring lenders to publish prices for other SME lending products such as secured loans, secured overdrafts, asset finance, invoice finance or trade finance" (page 586, footnote 14).*

### **Article 30 – Display of cost of unsecured loans and overdrafts**

- 9.2 Articles 30.1 and 30.3 require the publication of representative APRs and EARs on Providers' websites and in marketing and advertising materials in any medium (including materials given to existing customers in the context of renewing their borrowing or discussing their borrowing needs).
- 9.3 LBG considers that where a Provider has determined that an SME customer is eligible for an unsecured loan or overdraft at a rate specific to that customer, and has directly contacted that SME to offer lending at that rate, the "Representative rate" which must be mentioned in the marketing materials is the customer-specific APR and EAR being offered. This is because the promotion is customer-specific. This point should be clarified in the Final Order, as it would be confusing to the customer if Providers were also required to include the (potentially different) published representative rate for standard tariff products in the same marketing materials.
- 9.4 Article 30.4 of the Draft Order and paragraph 82 of the Draft Explanatory Note clarify that the obligation to publish and display rates applies to renewals of existing overdrafts on different terms (e.g. changing the size or rate of the overdraft). LBG agrees that Part 8 should apply to renewals. However, where temporary changes are made to overdraft sizes (typically short term extensions of credit for a period of days or weeks on the same terms as the existing overdraft), LBG considers that:
- (a) the Article 30.3.3 requirement to publish rates in any marketing and advertising materials should apply; but
  - (b) the rates applied for the temporary period (which are likely to be the same as the customer's existing overdraft rate) should not be included in the Provider's calculation of representative rates for the purposes of Part 8. This is to avoid the representative rates being skewed by temporary changes (LBG makes around **[CONFIDENTIAL]** temporary changes to SME standard tariff overdrafts per annum).

**Article 32 – Making data available to intermediaries**

- 9.5 Article 32.3 requires Providers to provide APRs and EARs for certain minimum increments for loan sizes and length to show *"how APR and EARs vary with loan size and length"*. Paragraph 87 of the Draft Explanatory Note welcomes Providers' views on the minimum increments to be set.
- 9.6 LBG offers single tranche pricing for unsecured SME loans of 1-5 years (i.e. the length of loan selected by the customer does not affect pricing). It would therefore be misleading for LBG to provide data for representative rates for 1, 2, 3, 4 and 5 year loan terms, as loan pricing (i.e. interest rates and fees) does not vary by loan length (for loans between 1 and 5 years). Any variation in representative rates would be due to other factors (sector, credit risk, loan size etc) reflecting the particular cohort of customers who had decided to take out a loan of that duration during the previous 12 months. As the cohort of customers taking out a loan of a particular size/duration combination during a 12 month period can be small,<sup>11</sup> the risk of misleading customers is heightened, and it would be more effective to provide a single APR and EAR for each loan size increment, covering "1-5 years". LBG would therefore suggest that Article 32.3 is clarified to state that *"Providers shall at a minimum use the following increments for loan sizes and length, but may make data available for consolidated increments where loan pricing (i.e. interest rates and fees) do not vary between loan sizes and/or increments"*.

**10. PART 9 - INDICATIVE PRICE AND ELIGIBILITY TOOL**

- 10.1 Consistent with the Final Report, Part 9 should not apply to secured overdrafts. As explained in the Final Report:
- (a) Providers are required to *"offer a tool in a prominent location on their websites to enable SMEs to obtain an indicative price quote and indication of their eligibility. This would cover all unsecured loans and overdrafts up to £25,000"*; (Figure 16.1); and
  - (b) *"We have concluded that it may not be effective and would be unlikely be proportionate to include secured lending in the scope of the remedy. Therefore, we decided to include only unsecured loans and overdrafts within the scope of this remedy. We consider that banks will still be able to include secured lending if they wish to do so"* (paragraph 16.42).

**Article 33 – Provision of tool on Providers' websites**

- 10.2 Article 33.2.1(a) requires the price and eligibility tool to give the user *"a percentage giving the likelihood of being eligible for a given product at the requested credit limit"*. This was considered as a potential option at paragraph 16.51(a) of the Final Report, which referred to *"an indication of eligibility in a clearly understandable format, for example a percentage indicating the likelihood of being eligible for a given product at a given rate."* However, the CMA did not decide on the specific format in the Final Report and has invited comments from the relevant Providers at paragraph 89 of the Draft Explanatory Note.
- 10.3 LBG agrees that it is important for the tool to provide an indication of eligibility, but considers that a precise percentage may not be customer-friendly and may give a misleading impression of the precision of the tool (e.g. when comparing the likelihood of acceptance between different Providers' tools). LBG considers that a more suitable solution for customers would be to provide a percentage range for eligibility (e.g. "60-70%") or to provide eligibility in words (e.g. "very likely", "likely", "unlikely"). The latter approach would be consistent with SME loan price eligibility tools already available in the

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<sup>11</sup> [CONFIDENTIAL].

market, as set out in Figure 10.1 below. As this remedy is only applicable to four Providers, it should be possible for the CMA to mandate common ranges/criteria, to ensure comparability across different Providers' tools.

**Figure 10.1: HSBC business loan eligibility tool**

## Outcome

**Good news! Based on what you've told us so far, it's likely that we could lend to you but we will need additional information.**

You chose Business Loan as a product that could suit your needs.

An HSBC Business Current Account is not required to apply for a Business Loan. You can apply as follows:

**Business Current Account & Business Loan**  
You'll first need to open a Business Current Account.

[Apply Now](#)

**Business Loan**

- Call us on 0800 587 0644\* (8am – 10pm every day) to book an appointment at your local branch;
- Visit your [local branch](#); or
- [Request](#) that someone from HSBC give you a call to discuss your needs.

## 11. PART 10 – SME BANKING COMPARISON TOOLS (NESTA PRIZE REMEDY)

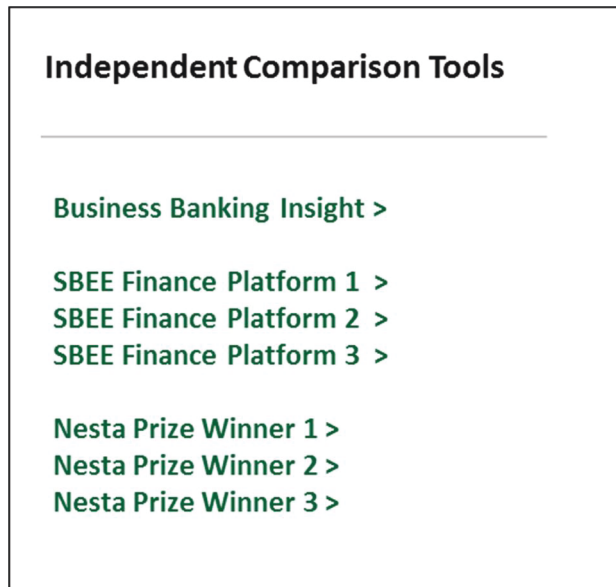
### Requirements to prominently display hyperlinks to comparison tools

- 11.1 Part 10 of the Draft Order contains the following requirements to prominently display hyperlinks to comparison tools:
- (a) Article 38.1 – the requirement that Providers' websites shall prominently display hyperlinks to the BBI website;
  - (b) Article 39.1.2 – the obligation on Providers to display prominently on their websites hyperlinks to the Finance Platforms on which their products are listed;
  - (c) Article 40.1.2 – the requirement that Providers display prominently on their websites hyperlinks to at least two comparison tool or tools on which their products are listed, one of which must be an Open Up Challenge Prize winner; and
  - (d) Article 41.7.2 – the requirement on Providers to display prominently on their websites hyperlinks to the comparison tool(s) commissioned following the Safeguard Remedy (if that remedy is required).
- 11.2 The Draft Order explains that *"for the purpose of... Part 10, Articles 39.1.2, 40.1.2 and 41.7.2, that links must be no more than one click away from the business banking homepage and must be on the product or related pages for BCAs, standard tariff Overdrafts and Unsecured Loans"*.
- 11.3 LBG agrees that customers using the Providers' websites and in particular the pages for the relevant products, should have their attention directed to the availability of comparison tools, as this will enhance the effectiveness of the relevant remedies. However, as explained in Section 4 above, the space available on webpages is constrained and there is a careful judgement to be made as to what information is most important for

customers on these pages. The inclusion of new information means the displacement of other valuable messaging for both Providers and customers.

- 11.4 The requirements in the Draft Order would result in numerous hyperlinks on the same webpages (see Figure 11.1 below), which may crowd each other out (reducing engagement) and create a risk of confusing and misdirecting customers (as customers would be unclear as to the purpose of each hyperlink). The inclusion of numerous hyperlinks would also displace other valuable messaging.

**Figure 11.1: Hyperlinks displayed in accordance with the Draft Order**



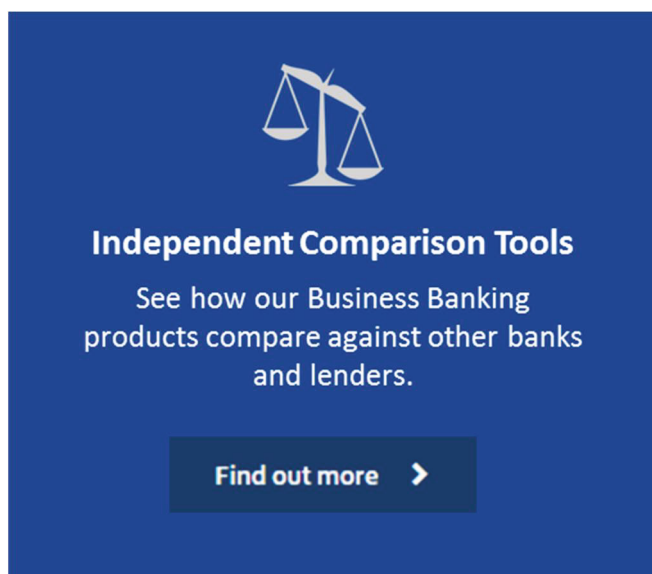
- 11.5 Moreover, the Draft Order creates an inevitable risk of competitive distortion. As explained above, there is insufficient space on the product pages to display hyperlinks to all third party comparison tools, particularly as more tools are developed following the Open Up Challenge. As Provider websites will be an important gateway for customers accessing such tools, Providers will be able to influence competition between comparison tools by deciding which tools to display, and how prominently to display these tools. The CMA should be aware, from its work on Digital Comparison tools and the Energy Market Investigation, of the importance of rankings in determining where customers click and that commercial comparison services bid competitively to secure top ranking on paid search for keywords. This may create perverse incentives:
- (a) Providers displaying the tools which offer the highest payment to the Provider. As the CMA will be aware from its Digital Comparison Tools review, an important aspect of competition between comparison tools is payment for prominent display (including in search engine results);
  - (b) Providers displaying the tools which they consider offer them the most favourable coverage. This is another concern the CMA is investigating in its Digital Comparison Tools review; and/or
  - (c) Providers with a poor SME offering relative to their competitors may select to display the least effective comparison tools, to minimise the risk of losing customers.
- 11.6 The practical limit on the number of comparison tools that can be displayed on Providers' websites may also create a barrier to entry for emerging comparison tools. All of these



factors are likely to lead to Providers facing complaints from comparison services about where their link appears.

- 11.7 The most effective and proportionate solution to these issues is to require Providers to include a prominent Johnson box on the relevant product page, which informs SME customers that comparison tools are available and prompts them to search for these tools themselves (e.g. on search engines, which requires minimal customer effort). This is illustrated in Figure 11.2 below, and LBG has made corresponding amendments to the Draft Order.

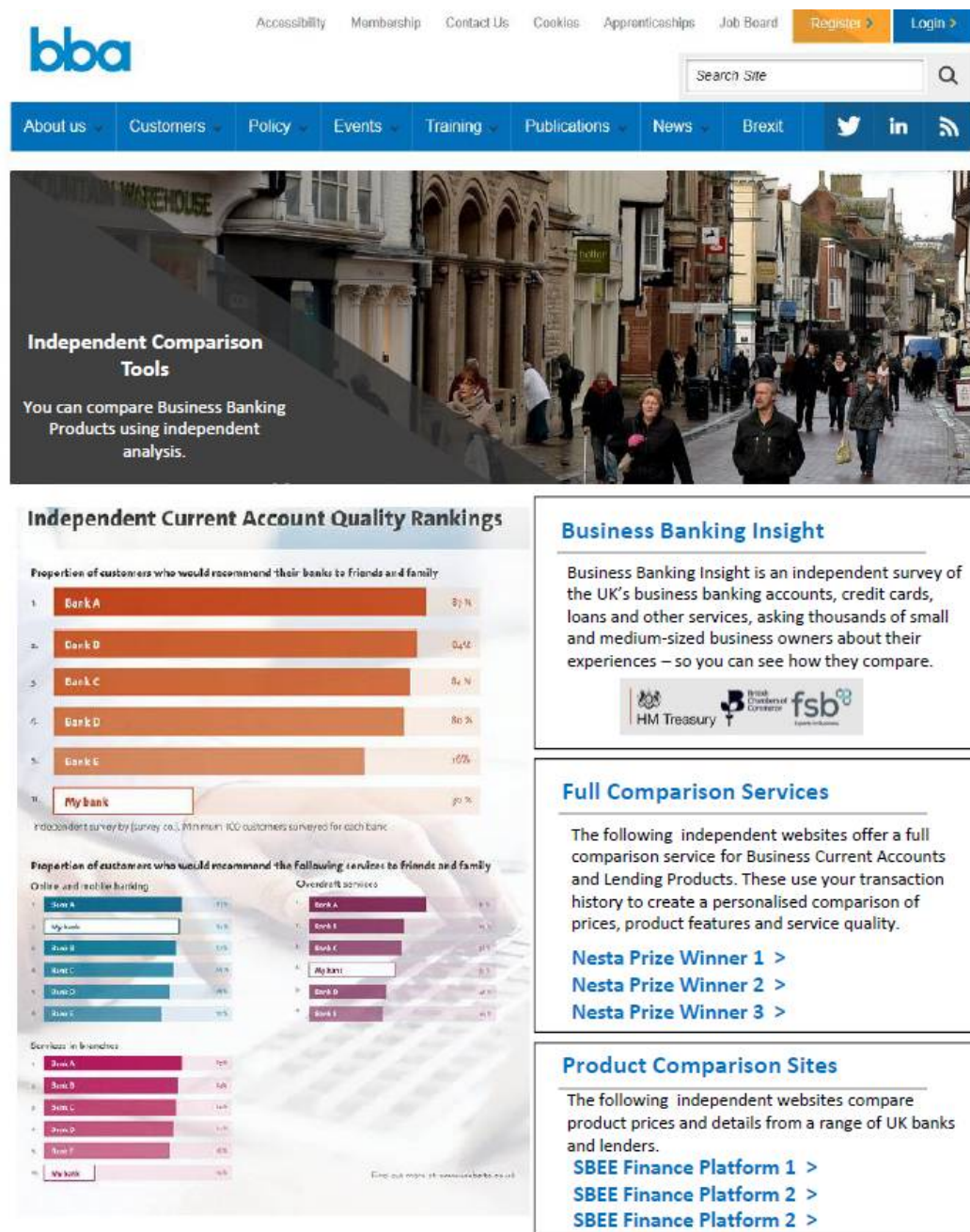
**Figure 11.2: Indicative Johnson box regarding independent SME banking comparison tools**



- 11.8 If the CMA considers that a link from the relevant product page is essential, the Johnson box could include a link to an industry-wide landing page, which would be hosted on an independent site (e.g. the BBA website), which all Providers within the scope of the relevant provisions of the Order would link to (see the example at Figure 11.3). The landing site would contain links to all suitable comparison tools (and would potentially also display Part 3 service quality indicators). This would be more effective than hosting information on Providers' websites, as there would not be a customer perception that the Provider recommended a particular comparison site or that the Provider had received some incentive from the comparison site in exchange for hosting the hyperlink. An independent site would also allow for a better customer experience across the industry and would be likely to enable a greater number of comparison tools to be hosted. The use of an independent site would also be a more proportionate remedy, as the costs of hosting and maintaining accurate links would be spread across the industry. In this connection, the CMA needs to be aware that any hosted site, even if run and hosted independently (e.g. by the BBA), will be prone to the same ranking issues and complaints from comparison services about where and how prominently they feature.
- 11.9 LBG would be willing to work with other Providers to establish such a landing site, which could potentially be hosted by the BBA.



Figure 11.3: Indicative independently-hosted landing page



## Article 41 – Criteria for triggering the Safeguard Remedy

- 11.10 LBG supports the inclusion of a Safeguard Remedy in the event that the Open Up Challenge does not result in a viable winner or winners. However, it would be premature and inappropriate for the Safeguard Remedy to be triggered prior to the conclusion of the Open Up Challenge process (particularly if Providers had already committed funding to the Open Up Challenge). Moreover, this would be inconsistent with Figure 16.2 and paragraph 16.134 (a) of the Final Report. Accordingly, Article 41.4.1 should be amended to refer only to the situation in which the Open Up Challenge has failed to produce a winner.

## 12. PART 11 – STANDARDISATION OF BCA ACCOUNT OPENING

- 12.1 LBG has no comments on this Part of the Draft Order.

### 13. PART 12 – COMPLIANCE AND MONITORING

#### Article 52 – Obligation to submit Compliance Reports on compliance with Part 8

- 13.1 Article 52.1.1(c) requires a report to the CMA on *"the proportion of customers who received Rates which were the same or better than the published Rate"*, with the first report to be submitted within one month of Part 8 coming into force. LBG considers that this reporting requirement should first apply three months after Part 8 enters into force, to allow Providers time to extract relevant data from their systems (for LBG **[CONFIDENTIAL]**). This would be consistent with paragraph 90 of the Draft Explanatory Note, which allows Providers to measure the accuracy of the price and eligibility tool over an initial three month period once the tools are operational.
- 13.2 Similarly, Article 53.1.1(b) should first apply five months after Part 9 enters into force, to allow for the initial three month period for measuring the accuracy of the price and eligibility tool (Article 33.3 comes into force 3 months after the rest of Part 9), and a further period to allow Providers time to extract relevant data from their systems.