

## RETAIL BANKING MARKET INVESTIGATION

### Notice of approval of certain changes and requirement for additional changes to the Agreed Timetable and Project Plan

#### Background

1. This notice is published pursuant to Article 10.6.1 of the Retail Banking Market Investigation Order 2017 (the **Order**). Article 10.6.1 is relevant to Part 2 of the Order, which sets out the provisions relating to Open Banking. The aim of Open Banking is to deliver open and common API standards, requiring the largest banks in GB and NI (known as the **CMA9**<sup>1</sup>) to make data available using these standards in order to facilitate new and innovative services. All terms used in this notice are to be interpreted in accordance with Article 9 of the Order unless an alternative definition is expressly provided for.
2. Part 2 of the Order also provided for the creation of an Implementation Entity, tasked with agreeing, implementing and maintaining the standards, and an Implementation Trustee who had responsibility for delivering this project. As part of this the Implementation Trustee was also obliged to propose a project plan and timetable which, once approved by the CMA, would become the Agreed Timetable and Project Plan set out in Schedule 1 Part B of the Explanatory Note to the Order.
3. On the 17 November 2017, the Implementation Trustee submitted to the CMA his proposal for revisions to the Agreed Timetable and Project Plan. The CMA approved the revisions proposed by the Implementation Trustee and published a notice of its approval on 22 November 2017.<sup>2</sup>
4. On 10 July 2018 the Implementation Trustee wrote to the CMA setting out proposals for further changes to the Agreed Timetable and Project Plan as amended in November 2017. The CMA approved the revisions proposed by

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<sup>1</sup> Specifically, RBSG, LBG, Barclays, HSBCG, Nationwide, Santander, Danske, BoI and AIBG.

<sup>2</sup> <https://assets.publishing.service.gov.uk/media/5a156f6540f0b627e22fdc55/notice-of-approval-of-changes-to-the-agreed-timetable-and-project-plan-retail-banking-market-investigation.pdf>.

the Implementation Trustee and published a notice of its approval on 26 July 2018.<sup>3</sup>

5. On 3 February 2020 the Implementation Trustee wrote to the CMA setting out proposals for further changes to the Agreed Timetable and Project Plan as amended in July 2018 (the **Proposal**). The Implementation Trustee informed the CMA, following on from the Open Banking Status Report dated 18 October 2019 prepared by the Implementation Trustee for the CMA and a consultation on the Proposal amongst stakeholders (which ran from 19 November 2019 to 15 January 2020), that the implementation of the Order was not yet concluded and the Proposal would “*successfully deliver against the implementation requirements of the [...] Order as they relate to Open Banking*”.<sup>4</sup>

## CMA assessment of the Proposal

6. On 5 February 2020 the CMA published a notice explaining that it was considering whether to approve the Proposal for the purposes of Article 10.6.1 of the Order and invited any interested parties to make representations to the CMA by 26 February 2020.<sup>5</sup> The CMA received representations from 16 market participants (the **Responses**).
7. The CMA’s views regarding the Proposal on the basis of this consultation are set out below.

## Proposal consultation process

8. The Implementation Trustee informed the CMA of the nature and extent of the consultations he had undertaken amongst stakeholders.<sup>6</sup>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/727947/notice-of-approval-of-changes-to-the-agreed-timetable-and-project-plan-retail-banking-market-investigation-july.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/727947/notice-of-approval-of-changes-to-the-agreed-timetable-and-project-plan-retail-banking-market-investigation-july.pdf).

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[https://assets.publishing.service.gov.uk/media/5e398d5840f0b609278cd388/Trustee\\_Roadmap\\_Proposal\\_to\\_CMA\\_FINAL\\_-\\_20203.pdf](https://assets.publishing.service.gov.uk/media/5e398d5840f0b609278cd388/Trustee_Roadmap_Proposal_to_CMA_FINAL_-_20203.pdf) (the Implementation Trustee Letter).

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[https://assets.publishing.service.gov.uk/media/5e3aa18e40f0b609281df5df/Notice\\_of\\_proposed\\_changes\\_to\\_the\\_open\\_banking\\_roadmap\\_final\\_.pdf](https://assets.publishing.service.gov.uk/media/5e3aa18e40f0b609281df5df/Notice_of_proposed_changes_to_the_open_banking_roadmap_final_.pdf).

<sup>6</sup> See Implementation Trustee letter referenced above. The process ran by the Implementation Trustee can be summarised as follows:

(a) In 2019, the CMA invited the Implementation Trustee to provide his view on the status of Open Banking in the UK. On 18 October 2019, the Implementation Trustee provided his status report to the CMA which included within it the proposal which he felt would help to ensure that the implementation requirements of the Order were successfully delivered.

(b) On 6 November 2019, the CMA requested the Implementation Trustee to consult on the proposal. He instructed the Implementation Entity to consult stakeholders before putting a final proposal to the CMA. This

9. This process was complemented by the consultation process run by the CMA. The CMA's consultation process involved the following elements:
  - (a) a three-week consultation with 16 Responses;
  - (b) meetings with respondents who requested the same; and
  - (c) discussions with concurrent regulators on the content of the Responses.
10. We are therefore of the view, taking into account both the actions taken by the Implementation Trustee and by the CMA, that the process that has been followed in relation to the Proposal has been appropriate.

### **Implications of COVID-19 for timing of implementation**

11. The CMA is conscious of the unprecedented challenges that many sectors are currently facing as a result of the COVID-19 crisis.
12. The CMA recognises that banks and building societies are justifiably prioritising changes that deliver Government-supported initiatives such as the Coronavirus Business Interruption Loan Scheme and meeting increased consumer and SME demands on contact centres. This coincides with a heightened focus on operational resilience and reduced change capacity, including as a result of staff unavailability due to lock down and self-isolation.
13. We were approached by UK Finance, representing financial providers including the CMA9 and asked to postpone the publication of our Decision and pause the implementation of the Proposal for a minimum of 3 months, including the progressing of evaluation exercises.
14. The CMA has considered these requests and recognises the need to avoid placing unnecessary regulatory burdens on the banking industry as it seeks to meet the needs of consumers and SMEs at this difficult time.
15. Accordingly, we have distinguished between the content of the proposal – *i.e.* what the CMA9 should be obliged to deliver under the Order – (considered in the following sections) and its timing – *i.e.* when they should be obliged to deliver it.

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consultation was carried out between 19 November 2019 and 15 January 2020 and invited participation from over 500 organisations. The consultation also involved three stages: initial, secondary and regulatory co-ordination.

(c) Over two phases of consultation over 70 submissions were received, from the CMA9, other ASPSPs, third party providers and many other stakeholders. Their feedback was taken into consideration in preparing the Proposal.

16. In the CMA's view the COVID-19 crisis does not materially impact the consideration of the content of the Proposal but does have a clear impact on timing.
17. Following discussions with the Implementation Trustee and other stakeholders and in light of the seriousness of the crisis as well as uncertainty over its duration, we have concluded that:
  - (a) Members of the CMA9 should be permitted to defer implementation activity related to non-performance Proposal items, where the individual bank or building society can show that their change, deployment or other relevant capability is currently insufficient, because of a need to divert resources to serve crisis-related priority initiatives, or because relevant resources have been depleted or disrupted as a result of the crisis;
  - (b) Material implementation activity related to performance improvements may be similarly deferred, though a route to improved performance remains a priority and members of the CMA 9 will be expected to continue to participate in reasonable investigative activity;
  - (c) Bank and building society participation in consultation activity may similarly be deferred until sufficient relevant resource is reasonably available.
18. We have therefore asked the Implementation Trustee to amend the Proposal to reflect these decisions, which will enable progress to be made where possible, subject to the constraints imposed by the crisis. We have also asked the Implementation Trustee to consider how best to organise consultative and investigative activities to minimise burdens on the CMA9 and other stakeholders during the crisis period.

## **Content of the Proposal**

19. The CMA has carefully considered the representations made in the Responses regarding the content of the Proposal.
20. The CMA acknowledges that many Responses welcomed the Proposal or specific aspects thereof.

21. The objections in relation to the Proposal centred around three main themes, namely whether elements of the Proposal are (i) within scope of the Order;<sup>7</sup> (ii) proportionate;<sup>8</sup> or (iii) in conflict with the Second Payment Services Directive (**PSD2**)<sup>9</sup>.<sup>10</sup> Our analysis has led us to the view that there are seven items in the Proposal which need to be amended. These amendments are summarised at **Table 1** below.
22. Before going into the detail of these amendments, we make two general observations. The first in relation to the argument in some Responses that the “payments-related” Proposal items (specifically, reverse payments and sweeping / Variable Recurring Payments (VRPs)) are out of scope of the Order and therefore cannot be approved by the CMA.
23. We do not agree with these arguments. The Order itself is, by design, a high-level and broadly drafted document, providing a framework for implementation of Open Banking that is focused on outcomes rather than the detail of the solutions themselves. The Order therefore must be interpreted in a purposive manner, taking into account the intent behind the Order as evidenced in particular in the final report to the CMA’s Retail Banking Market Investigation published on 9 August 2016 (**Final Report**) and the explanatory notes to the Order (**Explanatory Notes**).<sup>11, 12</sup>

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<sup>7</sup> Specifically, in relation to Reverse payments (A2(a)(iii)), Sweeping (A10) / A2(b)(ii) Variable recurring payments A2(b)(ii) (VRPs), Evolving open banking standards *r.e.* Confirmation of Payee and CRM code (A2(d)), MI (A2(c)(ii)), Customer evaluation framework (A2(c)(iii)), Functional and CEG conformance (A3), Performance improvement plans (A4), Improvement of API Performance (A5), OBIE focus activities (A14), and OBIE operating model activities (A15).

<sup>8</sup> Specifically, in relation to Reverse payments (A2(a)(iii)), Sweeping (A10) / A2(b)(ii) VRPs and the Root cause analysis (A7) (**RCA**). Note that several Responses referred to the costs of implementing Open Banking generally compared with the benefits that it has brought. We have not addressed these arguments in our analysis. The package of remedies, including the open API standard, implemented as part of the Final Report has previously been considered in detail and considered proportionate, as well as effective, to the issues identified in the Final Report and the customer detriment that results from them. We note, in any event, that some of the cost incurred in relation to Open Banking would have been incurred in any event by the CMA9 in order to comply with PSD2.

<sup>9</sup> DIRECTIVE (EU) 2015/2366 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366>).

<sup>10</sup> Specifically, in relation to Two-way notification of revocation (A2(a)(i)) / Evaluation of efficacy of TPP consent dashboards and ASPSP access dashboards (A2(b)(iii)), Trusted beneficiaries (A2(a)(ii)), Reverse payments, Sweeping / VRPs, Evolving open banking standards *r.e.* Confirmation of Payee and CRM Code (A2(d)), and the RCA).

<sup>11</sup> Final Report available here: <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>; Explanatory Notes to the Order available here: <https://assets.publishing.service.gov.uk/media/591c679340f0b63e0b000037/retail-banking-explanatory-note.pdf>.

<sup>12</sup> The high-level nature of the Order is evidenced in both the wording of the Order itself and by the very creation of, and instructions to, the Implementation Trustee and the Implementation Entity. As detailed in the Final Report the Implementation Entity was created in order to establish how the “*open standards for APIs and data be best developed*” and to “*take the remedy forward*” (Final Report, para. 13.27). The role of the Implementation Trustee is described as to deliver “*the remedy outcomes [...] stipulated*” (Final Report, para. 13.43). The Explanatory Notes explicitly acknowledge that Article 14 of the Order, which deals with the use of APIs for transaction data, is less detailed and states that this reflects “*the need for the Implementation Entity and Implementation Trustee to*

24. When taking such an approach, it is clear that these payments items are within the scope of the Order. The making and receiving of payments is integral to the functioning of personal and business current accounts. Of particular relevance here are:
- (a) The wording of Article 10.1.2 of the Order, which directly refers to the data standard allowing a third party to “*initiate a payment on behalf of a customer (subject to the customer’s explicit consent)*”. The Order does not limit the types of payments that can be initiated. Also relevant is the definition of current accounts covering the facility to hold deposits, receive and make payments by cheque and/or debit card, use automated teller machine facilities and make regular payments by direct debit and/or standing order.<sup>13</sup> It is inappropriate to separate the notion of payments from that of current accounts.
  - (b) The clear articulation in the Final Report that the purpose of the open API standard implemented in Part 2 of the Order goes beyond merely facilitating the sharing of specific data points. The intention behind Part 2 was clearly to facilitate the sharing of data necessary to achieve a number of outcomes which could address the issues identified in the Final Report. While this includes enabling “*intermediaries to access information about bank services, prices and service quality*”<sup>14</sup>, it also covers other aims such as “*facilitating the emergence on a large scale of new service providers with different business models offering innovative solutions to consumers and SMEs*”<sup>15</sup>.
25. It is our view that therefore, when taking account of the wider context and purpose, it is clear that the CMA’s intention was for the open API standard to facilitate transformation of competition in retail banking markets, rather than address a few narrowly defined technical problems.
26. The second general observation is to note that we have considered all of the submissions put to us in the Responses. This notice records our decisions relating to the issues that, in our judgement, were most salient. This particularly focusses on where our conclusions necessitated a change to the Proposal.

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*provide the detail of how this is to be achieved and exactly which products within the scope of the remedy it shall encompass*” (Explanatory Notes, para. 35).

<sup>13</sup> Para. 1, Appendix 1.1 to the Final Report.

<sup>14</sup> Final Report Summary, para. 168.

<sup>15</sup> Final Report, para. 13.7.

27. Against this background, the CMA's views on the seven items in the Proposal which need to be amended are now set out at Table 1 below.

**Table 1**

	<b>Proposal item</b>	<b>Amendment and reasoning</b>
1.	A2(a)(iii) – Reverse payments	<p>Reverse payments were included in the 2017 and the 2018 roadmap as an Order item.<sup>16</sup> The CMA’s view then was that reverse payments should be considered within the scope of the Order and, as set out in paragraphs 21 to 24 above, there is no reason why this should no longer be the case.</p> <p>Evidence received by the CMA has clearly demonstrated the importance of refunds in facilitating the growth of payment initiation services, which are a business model offering innovative solutions to consumers and SMEs.</p> <p>On proportionality, this evidence also shows that a payment service which does not incorporate a workable reverse payments function will be hindered in its ability to compete effectively with payment services offered by current account providers. The ability to make payments in both directions is in our view an essential component of payments functionality. Implementation of reverse payments will also therefore have, in principle, significant benefits for consumers.</p> <p>Evidence gathered by the CMA has also indicated that the monetary cost of implementing reverse payments, <i>i.e.</i> the technical standards developed by the Implementation Entity in conjunction with industry, would be modest relative to the potential benefits and involve a small one-off expenditure as opposed to any rolling implementation work.</p>

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<sup>16</sup> See <https://www.openbanking.org.uk/wp-content/uploads/Open-Banking-Revised-Roadmap-July-2018.pdf> (the **2018 Roadmap**), item P7.



	<p>This would suggest that the implementation of reverse payments is also proportionate.</p> <p>However, some Responses (including consumer representatives) expressed reservations in respect of two aspects of this item:</p> <ul style="list-style-type: none"><li>a) that the particular technical solution chosen by the Implementation Entity for the implementation of reverse payments, while relatively easy for the banks to implement, created potential data security risks; and</li><li>b) that the addition of refund functionality could increase the attractiveness to consumers of payment initiation services as a payment method, who would therefore use it in greater numbers but might be unaware of the lesser protection afforded to them when making a payment using a payment initiation service provider compared with using, for example, a debit or a credit card.</li></ul> <p><i>Data security</i></p> <p>With regard to the first concern, we will ask the Implementation Trustee to liaise directly with the Information Commissioner's Office to confirm, or otherwise, the integrity of the approach and relevant best practice. We recognise that implementation activity is ongoing and therefore require the Implementation Trustee prioritise this request. We will also ask the Implementation Trustee to convene and chair a working group of open banking stakeholders, including the representatives of consumer interests and the Information Commissioner's Office on the Implementation Entity Steering Group, to explore how other elements of the roadmap, such as the TPP code and the CEG, could be further strengthened in future updates to the standards used to address these concerns. We await the Implementation Trustee's advice on how soon such a group might be convened and</p>
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how long it will take him to develop a plan to address these concerns. We would look forward hope to receiving an interim progress report on this topic at least by the end of June.

*Consumer protection*

The grounds for the second concern are that

- a) SMEs including retailers already have an incentive to offer payment initiation services as a payment method as it is likely to be cheaper than card payments and they can collect payments immediately;
- b) if payment initiation services had a refund facility it would be more attractive to consumers, who would therefore use it in greater numbers; and
- c) this could give rise to detriment in the future as the consumer's rights when paying via payment initiation services are less than they enjoy when using some other payment methods (e.g. card payments), other than in respect of unauthorised or fraudulent transactions.

We note, however that:

- a) Refund functionality is not in itself harmful. On the contrary, it is clearly a benefit to customers to be able to get their money back if, for example, the goods they have purchased online are not what they wanted.
- b) Open Banking payment transactions using the Faster Payment Service (**FPS**), which underpins the great majority of payment initiation service applications, currently account for a very small proportion of **FPS** volumes in the UK. In February 2020 there were c.63,000 Open

		<p>Banking payment transactions (the highest on record) versus 154 million <b>FPS</b> single immediate payment transactions (SIPs).</p> <p>(2) <b>FPS</b> SIPs are a much less common payment method than, for example, debit cards. In 2019 there were around 3.5 million single immediate payments executed via <b>FPS</b>, but over 18 billion debit card transactions.</p> <p>d) The relative lack of protection available to users of payment initiation services compared with credit or debit cards is an issue for all <b>FPS</b> payments, not just payment initiation services.</p> <p>Because of the relatively small numbers of consumers likely, at least in the medium term, to suffer any potential detriment when using payment initiation services, and because of the likely benefits they will gain from refund functionality, we saw no reason to ask the Implementation Trustee to remove this item from the Proposal.</p> <p>We do consider it is nonetheless important that the general question of consumer protection when using FPS, including payment initiation services, is adequately addressed. However, the CMA is not the appropriate body to conduct such an assessment, we have discussed this with the Payments Systems Regulator and agreed that it is the responsible regulator. HMT's Payments Landscape Review is also an opportunity to consider consumer protection in FPS.</p> <p>The Implementation Trustee and Implementation Entity stakeholders can assist the PSR in this process. We will therefore ask the Implementation Trustee to convene and co-chair with the PSR a working group of open banking stakeholders, including consumer representatives, to identify the options for addressing these issues within the open banking ecosystem.</p>
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		<p>On PSD2, we are of the view that refunds, as credit transfers (<i>i.e.</i> a payment from the merchant’s payment account, to its customer’s payment account), are within the scope of PSD2 and the normal rules apply as for any other form of payment transaction.</p>
2.	A2(b)(i) – Variable Recurring Payments (VRPs)	<p>The CMA notes that VRPs have been included in the Implementation Entity’s workplan since 2017. Initially this concept was referred to as “mandates”. In the 2018 Roadmap the relevant item (P5) was divided in to two: P5A (relating to future-dated payments and standing orders) and P5B (relating to VRPs). Both items were included as Order requirements. The CMA’s view then was that VRPs should be considered within the scope of the Order and, as set out in paragraphs 21 to 24 above, there is no reason why this should no longer be the case.</p> <p>As a potential method for the implementation of sweeping (Proposal item A10), VRPs are within the scope of the Order. In line with the analysis set out above (see paragraphs 21 to 24), the Order must be analysed in context. The Final Report refers to sweeping expressly on a number of occasions, in each case supportive of its adoption and remarking on the positive change it can bring to customers within the retail banking industry.<sup>17</sup> The open API standard would not be able to meet the objectives and intended outcomes of the Order, interpreted in light of e.g. the Final Report, if sweeping functionality was not made available. VRPs, as a potential way of implementing sweeping, are therefore also within the scope of the Order.</p> <p>In relation to proportionality, we note that the Proposal only considers VRPs as one of several potential mechanisms for enabling sweeping. This preliminary evaluation will indicate whether VRPs are viable, whether any other alternatives would be effective in achieving the desired outcome, and which is the least onerous. Given the outcome of this evaluation is unknown and we therefore cannot carry out a proportionality assessment, we consider it appropriate for the Proposal to be amended to</p>

<sup>17</sup> Para. 14.82, 15.11 and 15.89 of the Final Report.

		<p>indicate that, should VRPs be the preferred or default method for sweeping, they should not be mandated until the CMA is satisfied that its adoption would be appropriate (e.g. that it did not give rise to consumer detriment, or other relevant costs that were disproportionate to the likely benefits). The Proposal should be amended accordingly.</p> <p>Finally, on PSD2, we are satisfied that there are a number of parameters which could be put in place to ensure VRPs / Sweeping are implemented in a way which is compatible with PSD2 (to the extent it needs to be), for example the customer could consent to a range of payment amounts.</p>
3.	A2(c)(iii) Customer evaluation framework (CEF)	<p>– We acknowledge that this is beneficial work and, in the CMA’s view, can be traced back to the general requirement under the Order for the Implementation Trustee to promote competition / take decisions in the interests of consumers.<sup>18</sup> In the CMA’s view it is implicit in the Open Banking project that evaluations would need to occur in order to monitor its progress against its objectives. Therefore, using the same purposive approach as the CMA considers is necessary as set out in relation to the payments items above (see paragraphs 21 to 24), the CEF falls within the scope of the Order.</p> <p>However, the CMA does acknowledge it will be important to ensure that this workstream does not stray outside of the scope of the Order. Therefore, it is the CMA’s view that any proposals / actions arising from this workstream will need to be carefully considered by the CMA prior to being mandated by the Implementation Trustee. The Proposal should be amended accordingly.</p> <p>The CMA also notes, as is further considered in relation to items A14 (OBIE focus activities) and A15 (OBIE operating model activities) below, that it may be the case that any material proposals / actions will be more appropriately taken forward on a consensual basis by another entity (e.g. whatever succeeds the Implementation Entity).</p>

<sup>18</sup> Paragraph 2(e) of Schedule 1 to the Order.

4.	A5 – Improvement of API performance	<p>The Implementation Trustee has set out his intention in the Proposal that this item should, among other things, define “<i>parity</i>” and “<i>continuous availability</i>” to determine minimum performance availability standards.</p> <p>The CMA’s view is that it is not necessary or therefore proportionate for the Implementation Trustee to undertake this aspect of this item. The CMA takes the view that in order to avoid any ambiguity in relation to the applicable performance benchmarks, it is appropriate for the current approach (using the PSD2 measure of meeting the standards of the direct interface) to continue. The Proposal should be amended accordingly.</p> <p>For completeness we note that we agree with the remaining aspects of this item, which relate to improving API performance more generally.</p>
5.	A7 – Root Cause Analysis (RCA) on consent success	<p>The CMA agrees with the need for this proposal item and the goal of understanding the reasons behind the existing low consent rates. We are therefore supportive of this item. We also note that this item flows from item P4 in the 2018 Roadmap which required, among other things, a follow-up review of authentication methods. As referred to above in relation to the CEF, this is reflective of the evaluations necessary to monitor progress of the Open Banking project against its objectives.</p> <p>In our view the Implementation Trustee has included in the RCA a number of measures to ensure that it will be a fair and thorough way of identifying underlying problems and potential solutions to increasing consent rates.</p> <p>However, some Responses expressed concern in relation to potential burdens / new functionalities which may be imposed at the end of the RCA. While we are reassured by the fact that there is no pre-determined mandatory implementation requirement for any alternative authentication method within this proposal, we consider it appropriate for any implementation requirements stemming from the RCA not to be mandated unless and until the CMA is satisfied that its adoption would be proportionate. The Proposal should be amended accordingly. The CMA also notes, as for the CEF</p>

		<p>above, that it may be the case that any such implementation requirements will be more appropriately taken forward on a consensual basis by another entity (e.g. whatever succeeds the Implementation Entity).</p> <p>We are also of the view that this item, which relates solely to an analysis of below par uptake, is not inconsistent with PSD2.</p>
6.	A14 – OBIE focus activities	<p>In the CMA’s view it is appropriate for these items to be removed from the Proposal as they do not comprise formal requirements on the banks but derive from obligations on the Implementation Trustee and Implementation Entity. We note that any measures that relate to activities beyond the delivery of the Roadmap should be considered in the context of the future governance of open banking. Whether and when these measures are appropriate will depend on what is decided about the future of the Implementation Entity and the wider Open Banking regime. The CMA notes that a number of regulators will need to input into this process, e.g. the HMT, FCA, PSR. The CMA therefore requests that these workstreams be removed from the Proposal and future related activities become part of the wider discussion on the future governance of Open Banking, alongside other long-term institution building activities, involving the CMA and other regulators.</p>
7.	A15 – OBIE operating model activities	

28. We do not consider any further changes need to be made to the remaining Proposal items (subject to the points regarding timing made at paragraphs 16 and 17 above).
29. In this context we note that we agree with the steps already taken by the Implementation Trustee to remove items from the Proposal on the basis of the evidence currently available and to ensure that the Proposal remains focussed. We therefore agree with the Implementation Trustee' decision to make Account Comparison part of the CEF as opposed to a standalone Proposal item; and that a Trustmark was unlikely to succeed as it is not supported by all stakeholders and there are no powers under the Order to mandate the compliance of TPPs with such a scheme. We assume that this is a topic which could be re-visited in the future if further evidence should come to light.
30. We also note for completeness that Proposal item A2(d), evolving open banking standards regarding confirmation of payee and CRM code, may be delayed pursuant to paragraphs 16 and 17 above on account of capacity constraints within the CMA9 arising from the crisis. Our expectation is that the members of the CMA9 will not implement confirmation of payee functionality into the payment initiation services provider journey during this period and until these journeys have been designed and incorporated into the relevant standards.<sup>19</sup>

### **Notice of approval of certain changes / requirement for additional changes to the Agreed Timetable and Project Plan**

31. The CMA has reviewed and hereby gives notice of its approval of the changes in the Proposal relating to the following items:
  - (a) A2(a)(i) – Two-way notification of revocation;
  - (b) A2(a)(ii) – Trusted beneficiaries;

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<sup>19</sup> For completeness only we note that the Implementation Entity is supporting Pay.UK with relevant services. The CMA has no role in approving this work, as it stems from PSR requirements and therefore the CMA9 are not mandated through the Order to approve it, however our understanding is that this work has been underway since 2018 (upon the request from Pay.UK / agreement from the CMA9) and that funding for this item is provided directly by Pay.UK. We also note that this conclusion also relates to the workstream "assisting Pay.UK with the delivery of Confirmation of Payee Phase 2 as requested by the CMA9" which has been included in the Proposal under item A14. As For the avoidance of doubt as noted in Table 1 above the CMA has requested that this item be removed from the Proposal.



- (c) A2(b)(iii) – Evaluation of efficacy of consent and access dashboards;
  - (d) A2(c)(ii) – MI;
  - (e) A2(d) – Evolving Open Banking standards re CRM/COP
  - (f) A3 – Functional and CEG conformance;
  - (g) A4 – Performance improvement plans;
  - (h) A10 – Sweeping; and
  - (i) A12 – TPP-side customer protection.
32. However, as set out from paragraphs 18 to 27 above, the CMA is also of the view that a number of changes should be made to the Proposal. The amends indicated above should be made to the following items:
- (a) A2(a)(iii) – Reverse payments;
  - (b) A2(b)(i) – VRPs;
  - (c) A2(c)(iii) – Customer evaluation framework;
  - (d) A5 – Improvement of API performance;
  - (e) A7 – RCA on consent success;
  - (f) A14 – OBIE focus activities; and
  - (g) A15 – OBIE operating model activities.
33. Moreover in recognition of the COVID-19 crisis, as set out at paragraphs 11 to 17 above, timing for all items of the Proposal should be reviewed to reflect that the implementation process may need to be temporarily delayed or, for some items, paused.
34. The CMA requests that the Implementation Trustee makes the above indicated amendments to the Proposal. The revised proposal should then be submitted to the CMA for approval. Thereafter and in light of the COVID-19 crisis we anticipate reviewing this revised proposal in a period of no sooner than three months from the date of this notice.

**Adam Land**

**Senior Director, Remedies, Business and Financial Analysis**

**7 April 2020**