

## Notice of making an order to vary the Northern Ireland PCA Banking Market Investigation Order 2008 made pursuant to section 161 of the Enterprise Act 2002

### Introduction

1. In May 2007 the Competition Commission (CC) published a [report](#) of the *Personal current account banking services in Northern Ireland market investigation* (our 2007 report).
2. In February 2008, to remedy the adverse effect on competition (AEC) identified in our 2007 report, the CC implemented a remedy package through the CC's Northern Ireland PCA Market Investigation Order 2008 (the Order), an enforcement order made under [section 161](#) of the Enterprise Act 2002 (the Act). The Order came into force on 22 February 2008, except Article 5 and Article 6 which came into force on 1 July 2008 and Articles 7 to 11 which came into force on 1 April 2009.

### Change of circumstances identified by the Office of Fair Trading

3. Under [section 162](#) of the Act, the Office of Fair Trading (OFT) has a duty to consider whether, by reason of any change of circumstances, an enforcement order made under sections [158](#), [160](#) or [161](#) of the Act is no longer appropriate and needs to be varied or revoked. In May 2010, the OFT advised the CC that the coming into force of the European Union's Payment Service Directive (PSD) and Consumer Credit Directive (CCD) constituted a change of circumstances by reason of which it may be appropriate to vary parts of the Order.<sup>1</sup>
4. The PSD has been transposed into UK law by the Payment Services Regulations 2009 which came into force for most purposes on 1 November 2009. The CCD has been transposed into UK law via a group of six Consumer Credit Act 1974 Regulations which came into force on 30 April 2010 and 26 August 2010 and which were required to be complied with in full from 1 February 2011.

### Our decision

5. The CC considered the OFT's advice and on 10 January 2011 published its decision that because of the nature of the changes that are required to the Order it was appropriate to vary the Order to reflect the change of circumstances pursuant to its powers in sections [161\(4\)](#) and [138](#) of the Act.
6. On 10 January 2011, in accordance with paragraph 2 of Schedule 10 to the Act as applied by section 165 of the Act, the CC also gave notice of its intention to revoke the Northern Ireland PCA Banking Market Investigation Order 2008 and make a new order to vary the Northern Ireland PCA Banking Market Investigation Order 2008 (the Notice). We took this approach given the substantive nature of the changes to the Order.
7. We have subsequently decided that for procedural clarity it is more appropriate to vary the Order by substituting all the text in the Order and replacing it with new text. The new text of the Order is set out in Annex A to the Northern Ireland PCA Banking

---

<sup>1</sup>[www.of.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/](http://www.of.gov.uk/OFTwork/markets-work/register-orders-undertakings/reviews/).

Market Investigation Order 2008 Variation Order 2011 (the Variation Order). References in this Explanatory Note to the 'Order as varied' refer to the text in Annex A to the Variation Order. The substance of the text in the Order as varied does not differ in any material respect from the text of the draft order on which we consulted.

8. In the Order as varied, changes have been made to nearly all of the articles in the Order including deletion of some and extensive amendment of others:
  - (a) Articles 1 and 2 of the Order have been amended to reflect the making of the Variation Order and changes made to other Articles;
  - (b) Article 3 of the Order has been deleted in full;
  - (c) Article 4 of the Order has been renumbered as Article 3 of the Order as varied but is unchanged;
  - (d) Article 5 of the Order has been amended to remove the requirement for independent certification of text and has been renumbered as Article 4 of the Order as varied;
  - (e) Article 6 of the Order has been amended to revoke the requirement to give information on charges and interest rates when opening a PCA and has been renumbered as Article 5 of the Order as varied;
  - (f) Article 7 of the Order has been deleted in full;
  - (g) Article 8 of the Order has been deleted in full;
  - (h) Article 9 of the Order has been amended to require only the provision of a 14-day period between notifying overdraft interest and charges and deducting them from the customer's account and has been renumbered as Article 6 of the Order as varied;
  - (i) Article 10 of the Order has been amended to require only the provision of a switching rights reminder and leaflet and has been renumbered as Article 7 of the Order as varied;
  - (j) Article 11 of the Order has been amended to remove the requirement to take into account the expected number of and level of direct debits and standing orders when offering an authorized overdraft and has been renumbered as Article 8 of the Order as varied;
  - (k) Articles 12 and 13 of the Order have been deleted in full as they are time-expired and consequently spent;
  - (l) Article 14 of the Order has been renumbered as Article 9 of the Order as varied;
  - (m) Article 15 of the Order has been amended to require compliance reports to be submitted to the OFT and has been renumbered as Article 10 of the Order as varied;
  - (n) Article 16 of the Order has been deleted in full;
  - (o) Schedule 1 of the Order has been amended to reflect the requirements of the CCD;
  - (p) Schedule 2 of the Order has been deleted in full;

- (q) Schedule 3 of the Order has been renumbered as Schedule 2 of the Order as varied but is unchanged; and
- (r) a new Schedule 3 has been added to the Order as varied to set out the format for compliance reporting to the OFT.

## **Consideration of responses to consultation**

- 9. The CC considered representations from five parties in response to the publication of the Notice. Three main points were raised in the representations covering Article 2(2)(a)(i) of the Order as varied; Article 7(1); and Article 10(2) and Schedule 3. The following paragraphs set out our views on these representations and the changes we have made to the Order as varied.

### **Article 2(2)(a)(i)**

- 10. Three parties said that the Banking Code, which is referred to in the definition of a 'basic bank account' in Article 2(2)(a)(i) of the Order as varied, had been superseded. It was suggested that the reference to the Banking Code be updated or the definition of a 'basic bank account' contained in the Banking Code March 2005 be inserted.
- 11. To ensure clarity we have substituted the reference to 'the Banking Code March 2005 or any subsequent publications of The Banking Code if relevant' with the definition for a basic bank account that was set out in the Banking Code March 2005.

### **Article 7(1)**

- 12. In our final decision paragraph 4.31, we said that we would require the rights reminder and switching leaflet to be given once a year with a form of statement. This requirement is set out in Article 7(1) of the Order as varied. We said that this requirement could be fulfilled by the provision of the information with the OFT's voluntary annual summaries, but could also be fulfilled by providing the information with a particular monthly statement once during the year.
- 13. Two parties continued to propose that the Order as varied should allow banks to provide the rights reminder and switching leaflet as a separate mailing to each customer. One bank noted that, as a bank operating across the UK, combining the rights reminder and a switching leaflet with a form of statement would significantly affect its ability to distribute other material to all UK customers. It said that our approach would therefore be disproportionate.
- 14. Having considered these representations carefully, we have decided not to make any changes to Article 7(1) of the Order as varied. The points made by the two parties regarding Article 7(1) were considered in our final decision, paragraphs 4.30 to 4.31, and in our 2007 report, paragraphs 6.158, 6.226 and 6.260:

- (a) First, our approach best fits with the intention of our 2007 report which set out that:

the rights reminder would be most effective if it were provided as part of the same communication as the annual summary and breakdown of charges and interest. This would mean that customers would receive a reminder of the ability to switch

at the same time as they had received information on the costs of operating their PCA.<sup>2</sup>

- (b) Second, our approach of requiring a switching leaflet and rights reminder to accompany some form of statement is no more onerous than the remedy set out in our 2007 report. As the banks have agreed with the OFT to provide annual summaries, our approach ensures that the intention of our 2007 report can be maintained. The costs of this remedy are no higher than those set out in our 2007 report because the requirements are in effect the same. No evidence has been provided to suggest that the implementation costs set out in the report were an under-estimate.
- (c) Third, our 2007 report considered in detail the proportionality of requiring remedies in Northern Ireland only for UK-wide banks. Our 2007 report found that the costs of implementing the original remedy package would not place those banks operating across the UK at a disadvantage when competing with those banks that did not have to implement the remedies.<sup>3</sup> The response to our consultation on this point is not a new argument and we have seen no new evidence to change the view set out in our 2007 report that those UK-wide banks should be treated the same as those other banks with a presence in Northern Ireland.

### **Article 10(2) and Schedule 3**

15. Three parties commented on the proposed monitoring requirements:

- (a) Two parties said that the data on customer complaints required in the annual compliance statement in Schedule 3 of the Order as varied may require changes to systems and processes that would not be possible in the short term:
  - (i) One party suggested either that banks be allowed to use current reporting formats for customer complaints or that a transitional period be provided to assist banks in making the necessary system and process changes.
  - (ii) Another party stated that it would be difficult to provide data on customer complaints in the manner set out in the template in Schedule 3. It suggested instead a monitoring process of annual self-certification by banks supplemented by consumer bodies (such as the Northern Ireland Consumer Council) highlighting any compliance failures on an informal and ad hoc basis.
- (b) One party suggested that the timing of annual compliance statements could be aligned with the annual compliance statements required under the Lending Standard Board's (LSB's) Lending Code.

16. In our view, the provision of data on customer complaints is important for the OFT to be able to continue to monitor the order in an effective manner. However, we have made two changes to Article 10(2) and Schedule 3:

- (a) First, with regard to transitional arrangements, we recognize that moving from one compliance process to another involves administrative changes such that customer complaints data may not be capable of being gathered retrospectively for the year ending 30 June 2011. We have therefore amended Article 10(2) to

---

<sup>2</sup>2007 report, paragraph 6.158.

<sup>3</sup>2007 report, paragraph 6.226 and 6.260.

facilitate the change in the compliance process and to allow for necessary changes to be made in the collation of customer complaints data. The change we have made is to require for the year ending 30 June 2011 only a self-certified compliance statement not including data on customer complaints. The requirement for a full annual compliance statement will commence for the year ending 30 June 2012.

(b) Second, with regard to the nature of data on customer complaints, we have simplified the example table in Schedule 3 by removing the column entitled 'number of complaints live at the start of the Review Period' and renaming the last column to 'number of complaints unresolved in the Review Period'.

17. We have not changed the dates of the Review Period. We note that the date for the LSB's annual compliance statement has moved from March to September 2011 to take into account changes to the Lending Code. In our view, it would not be effective to tie the date of our annual compliance statement to another set of annual compliance statements that can change the yearly reporting date.

### **Notice of making an order to vary the Order**

18. Although we have made some changes to the Order as varied as a result of the consultation, we do not consider that the changes set out in paragraphs 11 and 16 are material.
19. The CC now therefore gives notice of the making of the Variation Order, which is published alongside this Notice. As set out above, the Order as varied is set out in Annex A to the Variation Order. At the same time, we have also published an updated version of the Explanatory Note. This replaces the previous Explanatory Note published in February 2008.

PETER FREEMAN  
*Group Chairman*  
Competition Commission  
28 February 2011