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Charlotte Crosswell  
Chair and Trustee  
Open Banking Limited

14 January 2022 (sent via email)

Dear Charlotte,

**Clarification of the Definition of Sweeping**

I write to make the Electronic Money Association's (EMA) stakeholder representation with regards to clarification of the definition of Sweeping for Open Banking ecosystem participants.

The EMA fully supports the definition of 'Sweeping' that was endorsed by the CMA in its 26 July 2021 letter to the Implementation Trustee. Similarly, we welcome OBIE's endeavours to further clarify the definition of what constitutes 'Sweeping' for open banking with practical guidance for ecosystem participants, as we agree that different market interpretations of the definition could lead to disputes amongst participants, and ultimately stifle the emergence of innovative sweeping propositions, which the CMA envisaged would improve outcomes for personal and business current account customers. Equally, however, a definition of Sweeping that is too narrowly defined will curtail its utility as a use case, as well as its impact as a remedy.

The EMA takes the view that any clarifications to the definition of Sweeping should seek to assist Open Banking participants in recognising qualifying business functionalities as those of Sweeping. To this end, any further guidance should be anchored in the **intended outcomes** of the CMA open banking remedies and Order, and would be expected to benefit all payment accounts equally, without distinction.

However, we are concerned that some of the recent proposals to clarify the definition of Sweeping would appear to exclude the use of e-money accounts as a destination account, and are in direct contradiction to the CMA's objectives for open banking.

**Purpose of destination account**

We consider that the *purpose* of the destination account does not in itself indicate the customer's reasons for opting to use a sweeping service to make 'me-to-me' transactions. Instead, the product terms (pricing, quality, speed, ease of use, other benefits) of the destination account(s) will collectively determine the reason a customer chooses to use a sweeping service to transfer funds to those accounts.

Only the person or legal entity responsible for an account can determine how those funds will benefit from the sweeping activity, where sweeping is from or to an account under the control of that person. For instance, a customer may opt to use a money management tool that sweeps funds from the PCA into which their salary is paid, to another PCA that they use for a specific purpose (e.g. household expenses). The utility that the customer makes of that PCA bears no relation to the need for a sweeping functionality to or from that account. Seeking a restriction based on the purpose of the destination account is simply seeking to restrict customers' ability to utilise sweeping as a service.

Any further limitations on the definition of Sweeping which prescribes how funds can be used after the initial 'me to me' sweeping transactions may set an overly restrictive and anti-competitive precedent.

### CMA Intent

In addition to the overarching competition and innovation objectives of the open banking remedies, we understand that the broad intent of the CMA was for the open banking to act as foundational measures that would stimulate market development by:

- empowering SMEs and personal customers to take greater control of their banking arrangements (for example to avoid overdraft charges and manage cashflow),
- reducing the costs to customers of shopping around, and
- encouraging the development of a dynamic intermediary sector including providers of digital comparison tools and other FinTech advisory services.<sup>1</sup>

A further objective of the open banking remedies was to allow SMEs and consumers to unbundle overdrafts and savings accounts from current account services and sweep balances (to help avoid overdraft charges or to benefit from higher interest payments) using innovative third-party services<sup>23</sup>.

With the use of sweeping services in particular the CMA envisaged the following outcomes:

- a reduction in customer inertia and more effective current account switching service where funds are swept between accounts<sup>4</sup>
- increased scope for innovative money management services (facilitating the sweeping of funds between accounts to avoid charges)<sup>5</sup> and optimise cashflow.
- improved provision of, and access to, lower cost short term credit as funds are swept into current accounts when needed.

However, we note that the use cases for sweeping referenced in the CMA's final Retail Market Report are not exhaustive, and the CMA does not seek to place any boundaries on the innovative sweeping solutions that could emerge, rather that the CMA intended sweeping, as with Open APIs, to "*transform the financial services sector*"<sup>6</sup>. Furthermore, the CMA has advised that in relation to sweeping/variable repeat payments "*The Order 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 Investigation.*"<sup>7</sup> Hence the main factor that sweeping service providers (SSP) can use to assess whether a proposition meets the OB sweeping definition is if the use of sweeping transactions will support the broad improved customer outcomes sought by the CMA.

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<sup>1</sup> Paragraph 165, [Retail Banking Market Investigation Final Report](#)

<sup>2</sup> Paragraph 32, ['Making Banks Work Harder for You': CMA Overview of the Banking Retail Market](#)

<sup>3</sup> CMA Letter to Implementation Trustee, 26 July 2021

<sup>4</sup> Paragraph 14.82 and Footnote 41, [Retail Banking Market Investigation Final Report](#)

<sup>5</sup> Paragraph 15.11, [Retail Banking Market Investigation Final Report](#)

<sup>6</sup> ['Making Banks Work Harder for You': CMA Overview of the Banking Retail Market](#)

<sup>7</sup> Paragraph 23, [Notice of approval of certain changes and requirement for additional changes to the Agreed Timetable and Project Plan](#)

## **EMA Proposal**

**We suggest that the test of a qualifying destination account should simply be whether the account is owned or under the control of the customer. The perimeter of sweeping is reached when transfers are made to third party accounts, that are not under the control of the customer.**

## **Potential Options Identified**

The EMA participated in the discussions regarding the options identified by the OBIE Expert Advisory Group and we offer the following feedback on the options identified.

### **Option A**

*“The destination account needs to ensure funds are protected by the FSCS guarantee, or is a lending agreement covered by the Consumer Credit Act or a regulated mortgage”*

As the CMA noted in the aforementioned letter on the 26 July 2021, neither the CMA Order nor Final Report<sup>8</sup> place any express limitations on the type of destination account for Sweeping. However, option A would specifically exclude e-money accounts as destination accounts as they are not within the scope of the FSCS scheme.

This approach is counterintuitive and irrational. For many use cases where the destination account is an e-money account it may be difficult for the end-customer to make a material distinction between sweeping to their e-money account and sweeping to a traditional current account. Thus, this option is at best an artificial attempt to limit the utility of sweeping with a view to creating an advantage for interbank payments over those to other PSPs.

### **Customer protection**

We understand that, in part, the rationale for restricting sweeping transactions to destination accounts covered by the FSCS is to address consumer protection concerns should sweeping result in unauthorised transactions, or in the event of fraud. However, we consider this argument is illogical as the FSCS scheme is concerned with protecting customers from loss in the event of the account provider becoming insolvent; customers have no recourse to the FSCS scheme in the event of unauthorised, defective payments, or in the event of fraud. Whether the funds are swept to an account covered by the FSCS or to an account that is not covered by the FSCS, in relation to the risks associated with sweeping, the level of customer protection would be the same, and the FSCS guarantee will not provide further benefit.

As the CMA noted *“..the existing regulatory framework which governs questions of liability and redress in the event of unauthorised or defective payments applies to [VRP]. Consequently, [..].the same mechanisms for redress and the assignment of liability between ASPSPs and PISPs should apply to unauthorised and defective payments in the same way as other payments.”*<sup>9</sup>

### **Competition**

Competitive alternatives to personal and business current accounts provided by the banks have emerged since the CMA conducted the Retail Market Investigation; with some of the most successful using e-money accounts. Any restrictions that are placed on the type of accounts that can receive Sweeping transactions, which exclude entire market sectors undermines the core competition objective of the CMA Order to

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<sup>8</sup> [Retail Banking Market Investigation Final Report](#)

<sup>9</sup> CMA Letter to Implementation Trustee, 26 July 2021

facilitate “..the emergence on a large scale of new service providers with different business models offering innovative solutions to consumers and SMEs”<sup>10</sup>.

Indeed, such restrictions could act to reverse some of developments in the retail banking market. It would appear that by restricting destination accounts for sweeping transactions to those covered by the FSCS, sweeping propositions would largely be limited to moving funds to accounts offered by the very banks against which the CMA Order was directed. This would therefore entrench the incumbent banks’ advantage rather than supporting innovative service providers looking to enter, or expand in, the market, by restricting customer’s ability to choose e-money products that may be cheaper, faster, and with improved usability than traditional banking products.

**Therefore, we consider it is justified to assert that the scope of Sweeping should include e-money accounts as destination accounts.**

To further illustrate, please find below a number of possible sweeping use cases where e-money accounts as the destination could meet the intended goals of the CMA Order:

Use Case leveraging Sweeping	CMA envisaged outcomes:
<p><b>Smart savings</b> – an e-money account used to collect and distribute funds to the customer’s savings or investment accounts which maximise the customer’s returns.</p>	<ul style="list-style-type: none"> <li>• Empower customers to take greater control of banking arrangements</li> <li>• Innovative money management services; customers benefit from higher interest or returns.</li> <li>• Encouraging the development of a dynamic intermediary sector</li> </ul>
<p><b>Smart debt management</b> – e-money account used to collect funds to pay down loans or other debts.</p>	<ul style="list-style-type: none"> <li>• Empower customers to take greater control of banking arrangements</li> <li>• Innovative money management services; budgeting and control</li> <li>• Encouraging the development of a dynamic intermediary sector</li> </ul>
<p><b>Expense payments</b> - some businesses may wish to sweep funds into and out of e-money accounts at regular intervals to manage daily expense payments</p>	<ul style="list-style-type: none"> <li>• Empower customers to take greater control of banking arrangements</li> <li>• Innovative money management services; budgeting and control</li> <li>• Encouraging the development of a dynamic intermediary sector</li> </ul>
<p><b>Account switching</b> – transfer of a PCA/BCA to an e-money account proposition which is similar to a basic bank account, sweeping is used to transfer funds from the PCA as the CASS switching service is not available to e-money accounts. –</p>	<ul style="list-style-type: none"> <li>• Reduction in customer inertia and more effective current account switching service</li> <li>• Empower customers to take greater control of banking arrangements</li> <li>• Innovative money management services; financial inclusion, budgeting and control</li> </ul>

<sup>10</sup> Paragraph 13.7, [Retail Banking Market Investigation Final Report](#)

Use Case leveraging Sweeping	CMA envisaged outcomes:
	<ul style="list-style-type: none"> <li>• Encouraging the development of a dynamic intermediary sector</li> </ul>
<p><b>FX risk management</b> - businesses may wish to manage the FX risk that they are exposed to by moving funds into and out of Sterling e-money accounts periodically.</p>	<ul style="list-style-type: none"> <li>• Empower customers to take greater control of banking arrangements</li> <li>• Innovative money management services; budgeting and control</li> <li>• Encouraging the development of a dynamic intermediary sector</li> </ul>

### **Option B**

*“The destination account needs to be an account in the customer’s name and provided by a regulated firm.”*

The EMA believes that Option B represents the most feasible way forward for clarifying the Sweeping definition and ensuring that a broad range of destination accounts (including e-money accounts) can benefit from Sweeping functionality in line with the CMA’s objectives. However, we note that stating that the destination account must be “**..in the customer’s name..**” could in fact risk a narrow interpretation of the following Sweeping criteria:

*“v. The transaction is between two accounts belonging to the same person or legal entity”*

As explained in the Sweeping definition Footnote 3:

*“For the avoidance of doubt, it should be noted that the destination account may not have a unique sort and account number, for example, e-money accounts, building society roll number accounts and head office collection accounts for loans and credit cards may have common sort code and account numbers but a unique reference in the transaction will ensure the payment is applied to the correct customer’s account”*

Businesses will hold a range of accounts for different purposes and could - if this approach is adopted, be restricted in how they name accounts. This could give rise to confusion, as accounts are given similar names simply to ensure sweeping can be exercised, and may force existing accounts to be renamed. This will also conflict with naming criteria that applies to categories of accounts such as those used for safeguarding.

For example, where a ‘collection account’ is the destination account, the SSP’s ability to confirm that the account is ‘*in the same name*’ as the sending account will not be straightforward, particularly for SSPs seeking to test and have evidence to support their attestation that a transaction meets the Sweeping definition.

As a result, unless amended, this option may have the unintended consequence of restricting the type of destination account that could achieve the CMA order objectives – credit card accounts, mortgage accounts, savings accounts at building societies, and e-money accounts. Again, confining potential destination accounts in this manner severely restricts the potential for innovative sweeping use cases to emerge and restricts account naming practices for no observable benefit.

As previously discussed, **we suggest the test of a qualifying destination accounts be simply whether the destination account is owned or under the control of the customer.**

### **Option C**

*“In order to ensure sweeping remedies are appropriately targeted, specific propositions are either ruled in or ruled out of sweeping use cases”*

This option would introduce significant barriers to entry for service providers seeking to provide sweeping services, as well as considerable on-going cost. It would require the approval of all propositions intending to use sweeping (by an as yet undefined body), and the on-going monitoring and oversight of sweeping products/services as they evolve to ensure they continue to meet the definition of sweeping.

This could act to restrict the use of this remedy and be counterproductive to its objectives. It will discourage adoption because of the administrative cost and time required to utilise it, and will discourage product development that may utilise sweeping as a key component which will ultimately be to customer detriment as the status quo will remain with high friction and low speed of moving funds between accounts.

This also sets a poor precedent in the implementation of open banking practices.

Finally, this approach also lacks transparency and does not provide clarity for open banking participants on the factors to consider when designing a sweeping proposition or a service that employs sweeping. OBIE, or the appropriate body, would still need to define the criteria that would determine if sweeping is taking place.

### **EMA Conclusions**

Based on the above discussion, the EMA proposes a level playing field for payment accounts when interpreting sweeping. All ‘me-to-me’ transfers should be enabled, irrespective of the regulated status of the PSP, whether bank, building society, EMI or PI, and irrespective of whether the destination account comprises a deposit, e-money or a credit line.

The options set out do not offer reasonable outcomes for the reasons described above; option A creates an artificial limitation that is counterintuitive and potentially discriminatory. Option B introduces a limitation on account naming that has no perceptible benefit. Option C is impractical, introduces complexity and does not inform interpretation.

In order to support SSPs in their design and risk assessment of sweeping products and services we encourage an inclusive interpretation of sweeping that allows for all ‘me-to-me’ transfers, freeing up customers and businesses to utilise the sweeping functionality across the range of payment accounts.

**The perimeter of sweeping is reached when transfers are made to third party accounts that are not under the control of the payment service user.**

We propose:

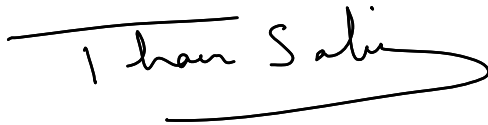
- Refraining from re-opening the agreed definition of Sweeping
- Discarding options A and C as they will have the outcome of limiting the potential for innovative sweeping use cases
- Amending option B to clarify that a destination account need only be owned or under the control of the customer, so as to include safeguarding accounts, and accounts identified by functional names.
- Set out clear statements that would inform participants of the intended outcomes of the CMA Order, and clarifying the inclusive and non-discriminatory nature of qualifying destination accounts based on ‘me-to-me’ functionality.

Finally, we consider that any clarifications that seek to curtail the use of Sweeping will only serve to concentrate market power for open banking payments with incumbent firms as variable repeat payments (VRP) would mostly be made available on a commercial basis, and hence would inevitably suppressing competition in the payment services market.

We therefore urge you to recommend a broad interpretation and clarification of the definition of Sweeping which will support the creation of propositions for variable repeat payments by incentivising payment service providers to deploy APIs for VRP's which are competitively priced, and thus stimulating a vibrant market for open banking payments.

Thank you for taking into consideration our comments and as always, we are available for further discussion.

Yours sincerely,

A handwritten signature in black ink, reading 'Thaer Sabri'. The signature is written in a cursive style and is underlined with a long, horizontal stroke.

Dr Thaer Sabri  
Chief Executive Officer  
Electronic Money Association

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