

CMA consultation on the future oversight of the CMA's open banking remedies Response from Innovate Finance

Innovate Finance is the independent industry body that represents and advances the global FinTech community in the UK. Innovate Finance's mission is to accelerate the UK's leading role in the financial services sector by directly supporting the next generation of technology-led innovators.

The UK FinTech sector encompasses businesses from seed-stage start-ups to global financial institutions, illustrating the change that is occurring across the financial services industry. Since its inception in the era following the Global Financial Crisis of 2008, FinTech has been synonymous with delivering transparency, innovation and inclusivity to financial services. As well as creating new businesses and new jobs, it has fundamentally changed the way in which consumers and businesses are able to access finance.

Innovate Finance welcomes the opportunity to respond to this [consultation on the future oversight of the CMA's open banking remedies](#). This response has been informed by engagement with our FinTech members. In particular, we are grateful to the CMA for allowing us to respond after the consultation has closed. We recommend that the CMA seeks views on future consultations within the standard two-three month time period for public consultations. This will provide enough time for smaller firms that lack the resources of larger institutions to respond and share their perspectives on any proposed new measures.

Independent and accountable leadership

- 1.1 It is envisaged by UK Finance that the Members of the Future Entity would appoint the Chair with "votes weighted by participant type." This process is not explained in detail and we will seek further clarity from UK Finance. However, it may give rise to a risk that a particular stakeholder group (eg the largest banks) would have an inappropriate degree of influence over the appointment. What process and criteria should be used to identify suitable candidates for the Chair? Who would be responsible for doing this, who should be kept informed and whose approval should be sought for decisions at this stage? Should the Members alone approve and appoint the Chair or should the CMA's approval be required, as was the case in the appointment of the Trustee?**
- 1.2 Does the proposed composition of the Future Entity Board constitute independent leadership? On its face, the composition of the board would suggest a balance of perspectives will be represented. However, should the CMA seek further information or assurances before concluding that the proposals will result in an independently led organisation?**

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- 1.3 To whom should the board be accountable. Should their accountability extend beyond the membership of the Future Entity? Are there transparency or reporting requirements that it would be appropriate to impose on the Entity's Board similar to those imposed on the OBIE?**
- 1.4 Does the initial funding model envisaged risk undermining the Future Entity's ability to act independently because of the potential tension between the interests of the CMA9 (who will be providing all of the funding initially) and the objectives of the independent Chair? Can the CMA be confident that the Future Entity governance structure (including an independent Chair, NEDs and the Advisory Committee) will be sufficient to resist pressures that may arise as a consequence? And if we cannot be confident what steps should be taken to mitigate this risk?**
- 1.5 Do UK Finance's proposals for the Future Entity raise any other concerns regarding its leadership and governance model? Are there any other alternative approaches which would be more suitable to address these types of issues?**

Innovate Finance members are concerned that the current composition of the Future Entity proposed by UK Finance fails to demonstrate enough independence and flexibility to accommodate a changing sector that is likely to grow and evolve over time. Members of the FinTech community believe that we have an opportunity to establish an entity that builds on the good work of the Open Banking Implementation Entity (OBIE) to deliver a framework for the growth and success of Open Finance, and other Open Data initiatives in future, and this should be the overarching aim of the new entity. The current proposals from UK Finance are too narrow in focus to account for the economies of scale needed to support the development of Open Finance and similar initiatives.

Any Future Entity should have a fully independent chair, with a sound knowledge of Open Data initiatives but with no loyalty to any one sector. The chair should be appointed for a fixed term(s) in line with industry best practice. Where possible board positions should also be considered through the lens of independence and balance, and seek to create a neutral governance environment that does not favour any one sector over another. This will incentivise the participation of other providers from the wider financial services sector, telecoms, utilities and other mandated sectors in future.

It is expected that the governance structure would allow some degree of engagement with Account Servicing Payment Service Providers (ASPSPs), third party providers (TPPs) and other stakeholders directly involved in the delivery of Open Banking at the moment. The exact form this takes needs to be carefully considered to ensure that it offers the right opportunities for participating firms to feed in views and shape development, without providing undue weight to any one perspective. The Future Entity needs to reflect and pursue an approach that puts the development of innovative and sustainable approaches to data-sharing between companies for the benefit of consumers and businesses as its core.

The board should be accountable beyond the membership of the Future Entity, and it would be appropriate to impose transparency or reporting requirements on the Entity's Board similar to those imposed on the OBIE.

We note the recent feedback statement from the Financial Conduct Authority (FCA) on the regulator's next steps regarding the development of Open Finance, as well as work being led by the Smart Data team in the Department for Business, Energy and Industrial Strategy (BEIS) to mandate data-sharing across a group of key sectors, including banking and finance. These initiatives will need robust governance and oversight to ensure effective delivery in the coming years. There is a strong case for evolving and expanding the OBIE model to support the delivery of this work instead of establishing a completely new and separate body that does not allow for this potential growth.

Adequately resourced to perform the functions required

- 2.1 In overall terms, is the framework proposed by UK Finance capable of performing the functions necessary to ensure the effectiveness of the CMA's open banking remedies going forward? Are there alternative approaches that the CMA should consider?**
- 2.2 Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:**
 - (a) What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?**
 - (b) Given that the anticipated external revenues may or not materialise in 2022 or be maintained after that date, how can the CMA and other stakeholders be confident that the budget of the Future Entity will be adequate to deliver the residual requirements of the Order?**
 - (c) How should the Future Entity set priorities in the face of a potentially reducing budget and competing requests for investment in future developments, including from the Participant Groups?**
- 2.3 The proposed funding model does not anticipate significant funding from the TPP community in the short term. Is this reasonable? Should more financial support be sought from firms acting as TPPs, some of which are quite large businesses and others, for example retailers, who are likely to benefit from the adoption of existing (rather than yet to be developed) open banking payment services in particular?**
- 2.4 The OBIE has performed functions and supplied services which while not stipulated in the Order have, in the opinion of many parties, proved fundamental to maintaining a well-functioning ecosystem. These include, for example, the**

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onboarding services that OBIE provides to help TPPs interface with ASPSPs. Can the CMA and other stakeholders be confident that these will be maintained?

2.5 Do UK Finance's proposals for the Future Entity raise any other concerns regarding its proposed resourcing? Are there any other alternative approaches which would be more suitable to address these types of issues?

While the proposed structure could cover Open Banking needs to some degree, the model misses the opportunity to provide space for expanding governance to an Open Finance/Open Data framework, which we know is a key initiative under development within the UK government and other regulators, as well as a core recommendation of the Kalifa Review of UK FinTech.

This is particularly challenging for two reasons:

- 1. Innovation** - the proposed structure does not provide an opportunity for a broader framework of innovation in data-sharing to develop.
- 2. Sustainability** - the proposed structure does not provide the economies of scale needed to develop a sustainable, self-funding model in future, as the number of companies able to participate is limited to banking and TPPs. Furthermore, the ability of the banks to withdraw membership, and therefore funding during the lifetime of the Future Entity, does not create the conditions for a certain and stable model that the industry can be confident will have longevity, a vital factor if the UK's ambitions for Open Banking and Open Finance are to be realised.

There are also concerns from members of Innovate Finance that any Future Entity needs to have adequate resources to carry out the functions of the CMA9 order and PSD2. FinTechs feel strongly that these functions should sit within an entity that has the funding, resources and mandate to ensure compliance with the regulations, and maintain a minimum level of service and quality across the Open Banking ecosystem. It is not clear from the approach proposed by UK Finance that this key function of the current OBIE will be adequately addressed in the new structure.

Whilst it is fair that TPPs should contribute to the ecosystem in a proportionate way, TPPs should not be required to pay for access to statutory services e.g. those mandated under the CMA9 order and PSD2. Where appropriate, ASPSPs can develop further services such as premium APIs that would require a fee for access. This incentivises innovation and is already developing organically across the ecosystem.

With this growth and development in mind, we would question the merits of requiring TPPs to contribute substantially to the running of the Future Entity. It has been suggested that a proportionate levy could be applied, perhaps through the FCA. However, we would note that if this proposal were to be implemented alongside the development of a commercial marketplace for Open Banking and Open Finance, TPPs would effectively be paying twice - once for mandatory access and robust governance, and again to access premium services developed by ASPSPs. This will stifle competition and innovation. Steps should be taken to avoid duplicating the financial burden on smaller TPPs when formalising the funding model of the Future Entity.

Representation of consumers and SMEs

- 3.1 Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?**
- 3.2 Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?**
- 3.3 What process and criteria should be used to select the consumer representatives on the Board and Advisory Committee? Should there, for example, be a specific reference to the needs of vulnerable or less well-off consumers?**

Innovate Finance members have expressed concerns that the proposed arrangements for representation of 'end-users' (encompassing individuals and businesses) is too restrictive and risks creating a situation of tokenism. There is a general view that one individual cannot credibly represent all categories of end-user. If Open Banking and Open Finance adoption is to grow within the UK, active and regular engagement with groups representing a broad range of end-users (from vulnerable individuals to SMEs) is needed, to support sustainable development and secure stakeholder support. Therefore, we suggest that an adequate supporting structure or advisory group is established alongside any one role selected to represent end-user interests, to ensure this is as representative as possible.

Sustainability / adaptability

- 4.1 Is the assumed ability of one or more of the CMA9 to withdraw from the Future Entity a cause for concern in terms of the sustainability of these arrangements? Would the CMA9 not have to retain membership in order to comply with certain requirements of the Order, for example to maintain the network that supports the directory requirement in the Order? Would, in any case, the benefits of membership to CMA9 members be expected to outweigh the (minimal) cost savings from withdrawing (which we would expect to be limited)? Would, nonetheless, a longer membership commitment from the CMA9 (for example, 5 years) provide greater security for the Future Entity?**
- 4.2 Would the membership / proposed funding model allow non-CMA9 account providers who had adopted the open banking standards, to "free ride": enjoy the benefits generated by the entity without making an appropriate contribution ? If so, and were it deemed necessary, how could this be avoided?**
- 4.3 Could or should the Future Entity, as UK Finance has suggested, be a suitable vehicle for the implementation of other "open" projects such as the FCA's Open Finance initiative and the BEIS Smart Data project? The Open Finance and Smart Data initiatives are not, as yet, fully defined. How, therefore, might the Future Entity be designed so as to accommodate their requirements?**

- 4.4 It could be argued that the maintenance and development of payment initiation standards should be dealt with separately from account information and as a scheme. What should be the relationship between the new arrangements and the oversight of payment systems more generally?**
- 4.5 Do UK Finance's proposals for the Future Entity raise any other concerns regarding the sustainability of the proposed approach? Are there any other alternative approaches which would be more suitable to address these types of issues?**

Tying funding to membership makes funding inherently unstable and could undermine the independence of the Future Entity. Funding should continue to come from the CMA9, through a mandatory regime, with the Entity able to recover costs through charging other ASPSPs for services and use of the Entity's assets. As Open Banking and Open Finance develop, there will be opportunities to generate additional commercial products within the ecosystem that can generate revenue for the CMA9 and the Future Entity.

It is for this reason that we again reiterate the need for any Future Entity to have the capacity to expand to cover the development of Open Finance as a minimum, and that the CMA considers how this Entity will operate within BEIS's Smart Data system in future.

Innovate Finance members do not believe that there is merit in separating account information services and payments initiation services. The underlying technology delivering these services is the same. Many TPPs are authorised and regulated to do both and often combine both services. Separating the maintenance and development of these services will negatively impact how compatible they are going forward, which will have a negative impact on the customer journey and experience. It will also create a disproportionate regulatory framework, generating additional burden on FinTechs and banks, and risks stifling innovation in this important area.

Our members have also expressed concerns about suggestions within the UK Finance proposals that efficiencies in the operating model of the Future Entity might be sought by adopting a more commercial approach to appointing the provider of the Open Banking Directory. Changes to the existing Directory will be extremely disruptive for TPPs and any tender process will require several months of lead time to prevent downstream impact on services to end users. There should be very careful consideration about whether to expose the existing directory to competitive tender.

Monitoring Arrangements

- 5.1 Our working assumption is that it would not be appropriate for an industry-led body – such as the Future Entity - to have responsibility for compliance monitoring of the conduct of some of its members. However, we envisage that whatever entity does undertake compliance monitoring will rely in part at least on data provided by the successor body to OBIE which it may also use for its own purposes. Is this reasonable? Could, with appropriate governance, the proposed Future Entity be**

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given the responsibility for monitoring the compliance of the CMA9 with the Order?

- 5.2 We have identified ecosystem monitoring as an important function that may, for example, indicate the need for product or other developments. Would this role fit best with the entity charged with compliance monitoring or conversely, would this role fit better with the successor body to OBIE?
- 5.3 The CMA commonly appoints an independent professional services firm as a Monitoring Trustee to monitor compliance with remedies imposed after Market Investigations or Merger Inquiries. Would this be appropriate in this instance and if so, which types of firms or other bodies could be considered? Would it be practicable to find a firm that was not conflicted?
- 5.4 ASPSPs may challenge suggestions that they are non-compliant and, currently, the Trustee's monitoring function makes an initial assessment which may be subsequently passed to the CMA. Should the new monitoring entity perform this initial screening, or should this reside with the CMA's enforcement function? We envisage the former but invite views, including to the contrary.
- 5.5 Is it necessary to continue monitoring activities at all since the FCA is already responsible for ensuring compliance with the (similar) requirements of the PSR including by the CMA9? To what extent would the FCA's current monitoring activities be an effective substitute for the activities of the Trustee's monitoring function?
- 5.6 Are there any other issues regarding monitoring and compliance which the CMA should be aware of?

There are a number of core functions necessary to maintain a thriving Open Banking environment, and in future, a similar framework for Open Finance and/or Open Data. A well-functioning system will require monitoring, supervision and compliance/enforcement. We propose that the Future Entity is best placed to handle monitoring and supervision to help lead the development of a strong ecosystem for Open Banking. This would include monitoring and guidance on effective implementation, reliability of interfaces and customer experience. This is on the basis that the Future Entity is independent with the appropriate governance in place to drive this approach.

In addition, some level of enforcement will be necessary to ensure that fundamental regulatory requirements are met. Innovate Finance members have expressed concerns that there is currently no mechanism in the proposed future framework to ensure serious breaches are addressed. It is recognised that the FCA is not the appropriate body to manage day to day or 'soft' compliance issues, but there needs to be further consideration to determine the design of a robust framework of enforcement, and potentially independent adjudication or arbitration to sit alongside this.

Transitional arrangements – design considerations

- 6.1 What measures should the CMA adopt to mitigate the risk that the OBIE's ongoing services will be interrupted or disrupted during a transition process?**
- 6.2 How should the ecosystem's performance be monitored during a transition process? Should, for example the Trustee's current monitoring function be maintained during a transition process and if so where would it be appropriate to site it?**
- 6.3 Who should be held accountable for managing the transition process and what incentives should be put in place to reinforce their obligations to ensure continuity?**
- 6.4 What steps should the CMA take to mitigate the risk that any remaining deliverables from the Roadmap are left incomplete? For example, should the CMA refuse to permit the commencement of the transition process before all of the elements of the implementation are in place? If not, what assurances should it seek and what safeguards would need to be put in place to eliminate the risk that the final elements of implementation would be unreasonably delayed or left uncompleted?**
- 6.5 Once the final remit of any new organisation to succeed the OBIE is agreed, for example its ability to undertake development work that is currently beyond its scope, would it be desirable to reflect this during the transition period?**
- 6.6 Are there any other issues regarding transition arrangements which the CMA should be aware of?**

Innovate Finance members believe that the current roadmap and operations of the OBIE should be prioritised and this should not be disrupted with the proposed establishment of a new and/or successor body. It is essential that the remaining deliverables in the OBIE roadmap are completed. Our members do not believe it is desirable for two bodies to operate in parallel during any overlap period as this will create extra costs and burden for all involved in the ecosystem.

Furthermore, our members suggest that there is a strong case for transforming the OBIE to meet future Open Banking and Open Finance needs, instead of establishing a different entity that will incur additional costs and risk the loss of key personnel with significant experience in this area. Evolving the current OBIE model to account for the introduction of Open Finance, and other sectors in future, is a more sustainable approach than establishing a new entity with limited scope that risks creating a fragmented model for data-sharing within and across sectors in future.