

**Competition & Markets Authority
Retail Banking Market Investigation Order 2017**

**Open consultation: The future oversight of the
CMA's open banking remedies
5 March 2021**

Response on behalf of Barclays Bank UK plc ("**Barclays**")

29 March 2021

*PLEASE NOTE: This response contains sensitive information, the disclosure of which may harm the legitimate business interests of Barclays. Barclays notes that the Competition & Markets Authority ("**CMA**") is bound by section 237 of the Enterprise Act 2002. We understand, therefore, that the information contained in Barclays' response will be treated in the strictest confidence.*

Introduction

Barclays welcomes the opportunity to respond to the CMA's consultation on the future oversight of the CMA's Open Banking remedies ("the **Consultation**"), published 5 March 2021.

Barclays has been a consistent and vocal advocate of the advantages that Open Banking will bring to consumers and SMEs, and has worked hard to ensure that we are helping to build a resilient, trusted and transparent framework. We are fully committed to the continued success of Open Banking, both as an account servicing payment service provider ("**ASPSP**") and a third party provider ("**TPP**"). Our aggregation capability within the Barclays app, our recently launched Barclays Bank Pay solution, and our business proposition SmartBusiness Dashboard allowing for integration of accounting services, demonstrate our investment in the future of Open Banking, positioning Barclays as both an account information service provider ("**AISP**") and a payment initiation services provider ("**PISP**").

The retail banking market has moved on considerably since the introduction of the CMA's remedies in 2017, which were intended to address the adverse effects on competition ("**AECs**") that the CMA had found in respect of PCAs/BCAs following on from its Retail Banking Market Investigation (2014-16).

Indeed, the Implementation Trustee highlighted the impressive successes of Open Banking in the OBIE's Annual Report, published in February 2021: *"Today, over three million UK citizens and small businesses are active users of open banking-enabled products. The ecosystem is thriving: 301 firms are active in the market, with another 450 in the pipeline ... Note the actual number of active users of open banking-enabled apps and services will be larger as c.70 ASPSPs not members of the CMA9 have also implemented the Open Banking Standards."*¹

A key customer benefit is that screen scraping is no longer used as a means for third parties to access customer accounts. This has put customers back in control of their data, reducing the risk of fraud, through ensuring that customers are no longer sharing their security credentials with third parties, thus providing them with ongoing and unlimited access to their account.

Further, we note in particular that the increase in attractive TPP propositions has led to payment initiation services ("**PIS**")-enabled payments becoming increasingly prevalent, as was recognised by the CMA in its decision on the anticipated Visa/Plaid merger: *"The available evidence indicates that there is already some demand-side substitution between card-based payments and PIS-enabled payments, and that this is likely to increase in future."*² As highlighted in OBIE's Annual Report, 2020 was *"a year of breakthroughs"* for Open Banking.³

¹ See Trustee's Welcome, OBIE 2020 Annual Report, published February 2021, p.4:
<https://www.openbanking.org.uk/insights/obie-annual-report-2020-2021/>

² See paragraphs 9 and 151 of the CMA's final decision, ME/6886/20, Anticipated acquisition by Visa International Service Association of Plaid Inc., 24 August 2020

³ OBIE Annual Report, p.11: *"2020 was the year the public first saw a range of open banking-enabled propositions that could deliver real value for them.*

The ecosystem grew strongly in 2020. In January 2020, 204 regulated providers were enrolled in our OBIE Directory; at the time of publication that number has grown to 301 firms.

Since its launch in July 2020, our Open Banking App Store now lists 101 open banking-enabled propositions.

End user adoption also grew strongly across 2020. Monthly active users grew to one million in January and then reached two million in September."

UK Finance Proposal is the best model to ensure continued success of the ecosystem

We are supportive of the UK Finance proposal, which is pro-competitive and would allow participation across the financial services industry. Careful consideration has been given to the proposed governance structure to ensure all parties have a voice.

As mentioned above, the Open Banking remedy has developed the key building blocks for Open Banking, under the oversight of the CMA, Implementation Trustee and OBIE, and with the support of the CMA9. The fulfilment of the Agreed Timetable and Project Plan, as amended and approved by the CMA on 15 May 2020 (“the **Final Roadmap**”), in conjunction with the ever-increasing competition that this has led to, mean that this is now the optimal time for the CMA to entrust Open Banking to the ecosystem. This would enable competition to be market-led, which in turn would be the best way for the ecosystem to continue to flourish, with participation across industry, and to incentivise all industry players to participate in its development.

The UK Finance proposal provides a construct for ASPSPs to meet their regulatory requirements under the Payment Services Regulations 2017 (“the **PSRs**”), and to ensure that the requirements of the CMA’s Retail Banking Market Investigation Order 2017 (“the **Order**”) relating to Open Banking continue to be met. On top of this, the proposal puts forward a way to allow collaboration across the ecosystem, to further evolve and develop Open Banking, so that it continues to meet the needs of consumers and SMEs, whilst promoting innovation and competition outside of what is required by regulatory mandate. If transition to this Future Entity is delayed or prevented, then we would run the risk that, without a mandated roadmap (as the Final Roadmap draws to a close), a future entity could shrink to a minimum construct that only meets the ongoing requirements of the Order, thus restricting the opportunity and hindering innovation.

The CMA states in the consultation that *“While the largest banks have shown signs of embracing open banking, they may also have an incentive to slow the further development of the open banking ecosystem, where this conflicts with their own commercial objectives.”* In addition to the comments above on our continued commitment, we note that we would remain bound by the PSRs, and given the huge investment we have put in to Open Banking, it would make no sense for us to neglect it moving forward.

CMA’s remit once the Final Roadmap is completed

The CMA must limit its endeavours to the actual requirements of Part 2 of the Order, which relate to setting up of the relevant Open Banking standards and the provision of read/write data in relation to PCAs/BCAs, rather than the building of the entire ecosystem, which is neither an explicit requirement, nor a reasonable and proportionate ex-post interpretation of the Order.

It is not the CMA’s role to mandate solutions which may or may not achieve this result for the ecosystem. Such assessment must be alive to the fact that the Order being satisfied is not the same as Open Banking adoption: indeed, as noted by Bill Roberts (Head of Open Banking, CMA) at the Implementation Entity Steering Group (“**IESG**”) meeting of 16 January 2020, *“the job is not to get Open Banking done; the job is to get the Order implemented. ...getting Open Banking done may never*

happen as it is a journey and not an event... the notion is that once the Order is delivered it is delivered".⁴

As such, it is not for the CMA to interpret the underlying policy objectives of Open Banking in such a way as to impose further obligations on the CMA9 that were neither included in the Order nor foreseen at the time of the CMA's final report on the Retail Banking Market Investigation dated 9 August 2016 ("the **RBMI Final Report**"); and insofar as any additional Open Banking functionality or standards may be deemed desirable or necessary by the ecosystem, this should be left to the Future Entity. The development of matters such as premium APIs should be left to the market, rather than imposed by the CMA or another entity.

CMA must have regard to proportionality

The CMA is required to impose remedies which are proportionate to the AECs that it is seeking to correct, and which do not produce disadvantages which are disproportionate to the aim of the remedy.⁵ In addition, it must consider the potential negative effects including the cost to business.⁶ As things stand, Open Banking is already by far the most expensive remedy emanating from a market investigation. Given the expenditure on Open Banking to date (see details below), it would not be proportionate to seek to impose an external monitor, in circumstances where the CMA9 would be able to undertake this monitoring themselves, and self-report any potential breaches to the CMA, as is already the case in respect of the other parts of the Order.

The spend on implementing the Open Banking remedy to date has been significantly higher than the amounts foreseen and taken into account by the CMA in its original 2016 assessment. Although the CMA recognised that the costs of Open Banking would be "*material*", it chose to focus on the additional costs of Open Banking on top of PSD2.⁷ The CMA concluded that "*the costs of the remedies [i.e. Open Banking] would exceed that of complying with PSD2. However, the difference was likely to be small, particularly relative to the benefits of prompt implementation of this key measure...*"⁸ and that it did "*not expect that the total costs of support in cash or kind [for supporting the OBIE and the Implementation Trustee] would exceed £20 million*".⁹ Furthermore, there was an expectation that these costs and resource commitments would only be spread over two years, rather than the circa five-six years in total that it will have taken.

Looking at the reality of setting up Open Banking, Barclays itself had already spent in the region of [§<] million as at January 2020, of which c.[§<] million was OBIE contribution. Furthermore, the industry as a whole had already spent c.£ [§<] billion on Open Banking as at late 2019, including c.[§<] million on the operational costs of OBIE.¹⁰ Whilst we recognise that a subset of these costs would have

⁴ Para 2.53: <https://www.openbanking.org.uk/wp-content/uploads/1.-Minutes-16012020v0.5.pdf>.

⁵ See paragraphs 342 and 344 of "CC3 (Revised)—Guidelines for market investigations: Their role, procedures, assessment and remedies".

⁶ "CC3 (Revised)—Guidelines for market investigations: Their role, procedures, assessment and remedies", paragraph 352.

⁷ RBMI Final Report paragraph 13.82-83.

⁸ RBMI Final Report paragraph 13.87.

⁹ RBMI Final Report paragraph 13.86.

¹⁰ Figures compiled by UK Finance, as at Q4 2019.

been incurred as a result of PSD2 delivery, the OBIE costs and costs associated with multiple releases and non-PSD2 mandated activity have been significant.

CMA Consultation Questions

UK Finance Proposal

Barclays has been an active participant in the UK Finance working groups, collaborating with industry to develop a suitable future construct that works for all parties. Ongoing compliance with the Order is a core focus of the proposal, but the industry is demonstrating its willingness to further invest in the non-regulatory mandated opportunity, on top of the significant amount invested in Open Banking thus far. The resulting proposal strikes an appropriate balance between independence, competition, customer-focus, and innovation. Careful consideration has been given to the governance structure, to ensure that all parties have a voice.

We are therefore supportive of the proposal that has been put forward by UK Finance, and seek to address some of the questions raised by the CMA, in our response to the consultation questions, below.

1. Independent and accountable leadership

1a) 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?

The primary considerations when appointing the Chair include the need to ensure independence, and the identification of necessary experience, whilst ensuring that the process supports diversity and inclusion. To reduce the risk that one particular stakeholder has an inappropriate degree of influence over the appointment of the Chair, we would propose that an Interim Chair is appointed, as part of the Transition Advisory Group. This Interim Chair could oversee the appointment of the Board of the Future Entity, including the industry representatives, the independent NEDs and the future Chair. The Interim Chair could oversee the shortlisting of the candidates for the position of Chair, and the newly appointed Board could participate in the interviewing process, and vote on the Chair’s appointment. If it is not possible to appoint the Board prior to the appointment of the future Chair, then the make-up of the interviewing panel should reflect the proposed make-up of the Future Board.

The process to appoint the future Chair should primarily be driven by an independent headhunter, once the key parties, including the CMA and representatives of the ASPSP, TPP and Consumer and SME communities, have agreed upon a job specification. We would propose that the Interim Secretariat and Interim Chair commence the drafting of the Job Specification, and that the current IESG representatives and the CMA input into this, and sign it off. The independent headhunter would then be in a position to identify and shortlist suitable candidates, accounting for the necessary experience and diversity and inclusion requirements.

This Future Entity does not fall under the mandate of any regulators, and therefore the regulators do not have the legal authority to require that they approve the appointment of the Chair. However, given the importance of continuity from Open Banking, it could be suggested that the CMA, FCA and HMT oversee the appointment of this first Chair, and that the appointment of any subsequent Chairs would be by Members of the Future Entity only.

1b) 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?

Careful consideration has been given to the governance structure, to ensure its independence. The composition of the board is such that ASPSPs and TPPs have an equal voice. End consumers are represented on the board (both by the dedicated representative from a Consumer Group, but also by the ASPSP and TPP representatives who have consumers and SMEs as their customer base). Finally, there are a number of independent NEDs that can ensure balance.

All ASPSPs and TPPs are able to become Members of the Future Entity, to ensure that their voices can be represented via the Advisory Committee, as well as via their respective Board representative. This structure further ensures that there is a balance of perspectives being represented.

Furthermore, there is an opportunity to influence development work undertaken by the Future Entity, through proposals brought forward by Participant Groups. Anyone is able to form and participate in a Participant Group, including non-members, so long as there is sufficient market demand for the work (demonstrated through participation in, and funding of, that Participant Group).

1c) 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?

As with most companies limited by guarantee, the Board should be accountable to its Members. The structure of the Board, as outlined above, helps to ensure that the perspectives of the key parties in the ecosystem will be considered.

The OBIE was set up as a direct requirement under the Order, and it had accountability and reporting requirements to the CMA. Given the Future Entity falls outside of any regulatory mandate, it should not be accountable to any regulator. However, the Future Entity will support firms in meeting their own regulatory requirements, and as part of this, will collate management information (“MI”) on behalf of the industry which can be shared with its members, and the relevant regulators. This will be seen as a fundamental requirement of the Future Entity, and any potential future proposal to stop it would have to have agreement from members, in consultation with the relevant regulators that utilise the MI.

1d) 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?

There is no regulatory mandate for industry to set up an entity to facilitate future development in Open Banking and Open Finance, once the Final Roadmap is completed. Furthermore, the ecosystem today has no formal mechanism to generate innovation beyond the CMA-mandated activity. Therefore, the best way to achieve this is via industry collaboration. UK Finance has worked with industry to propose a model that goes further than what is required under the current regulatory mandate, enabling the facilitation of Open Data in a way that is collaborative, market-driven, commercial and responds to demand from industry stakeholders.

The CMA9 recognise the value that such an entity could bring to the industry, and therefore to get this entity off the ground, have proposed to fund its inception in 2021. From 2022 onwards, all member ASPSPs (not just the CMA9) will be expected to fund the Future Entity, proportionally, through service fees and annual funding requirements. During this time, the entity will be expected to ensure that it operates efficiently, and seeks commercial opportunities, to reduce its reliance on ASPSP funding over time. This financing model has been proposed to enable a swift and seamless transition from OBIE over to the Future Entity, as the Final Roadmap draws to a close, not to undermine the independence of the Future Entity. Therefore, should other parties, including the TPP community, wish to provide funding towards this Future Entity, then this would of course be possible.

The independence built into the proposed governance structure should allay any concerns regarding the Future Entity's ability to act independently. There are other examples of industry-funded entities that act independently, for example the Lending Standards Board ("**LSB**")¹¹. Independence arises from the Directors of the company acting in compliance with their corporate law fiduciary obligations to the "company". It is not envisaged that the providers of the company's funding are the decision makers in respect to the allocation and distribution of those funds – that would remain within the domain of the Directors of the company, whose sole obligation is to manage the funds of the company in a prudent manner that permits the company to meet its aims and obligations.

Furthermore, the model enables Participant Groups to put forward work to be developed by the Future Entity, but for the most part, the Participant Group members will be expected to fund the proposed work. This means that development will not be overly influenced by any specific stakeholders, as Participant Groups will be backing and financing the proposals being developed. A Participant Group is not required to have any specified member types, therefore there is no requirement to have a CMA9 or ASPSP member, for example.

¹¹ On the website of the LSB, it states "*We are funded by our registered firms but we operate as an independent body, governed and overseen by an independent Board composed of Non-Executive Directors.*", <https://www.lendingstandardsboard.org.uk/about/> accessed 18.03.2021.

1e) 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?

No further comments.

2. Adequately resourced to perform the functions required

Introductory comments:

As outlined above, the CMA9 recognise the value that the Future Entity could bring to the industry, and therefore to get this entity off the ground, have proposed to fund its inception and provide stability through financial support for the first three years. During this time, the entity will be expected to ensure that it operates efficiently, and seek commercial opportunities, to reduce its reliance on ASPSP funding over time. Detailed due diligence of the existing OBIE will help inform the board of the future opportunities regarding the effective and optimal running of the services needed for compliance, as well as informing innovation opportunities.

Furthermore, the OBIE was funded to create the standards for Open Banking, and therefore there were high upfront costs to achieve this. As the Final Roadmap draws to a close, and the work becomes BAU, it will be possible to significantly reduce the costs, given the limited new development work required for ongoing compliance of the Order. Whilst the 'run' components of OBIE will transition across to the Future Entity, and these BAU activities will continue, its transition will enable focus on increased efficiencies and cost savings.

We envisage there being a number of different types of activity that the Future Entity will undertake:

- Fixed activities: A lot of the work that the OBIE perform today will transfer over to the Future Entity. This work should be optimised from a cost perspective, to ensure that it is delivered efficiently. Some components may be outsourced to other parties following competitive tender processes, rather than centrally through this single entity. This will help ensure that these components are delivered efficiently and cost-effectively, so that prices can remain competitive. There are already examples of outsourcing taking place at OBIE, for example with components of the Service Desk and Directory.
- Variable activity driven by market demand (Participant Groups and Discretionary Change): The 'new delivery and change' work that the Future Entity undertakes (e.g. Premium APIs) will primarily be driven by market demand and commercial opportunity, within the confines of competition law. Participant Groups that see value in new projects being delivered will be expected to fund these projects. This funding will be in addition to the funds provided by the ASPSPs to run the BAU of the Future Entity. This enables the Future Entity to flex up as required, when commercially supported work is put forward. A small number of projects may provide value for industry/consumers/SMEs, but not have commercial drivers. Therefore, a defined budget will be set aside for these discretionary projects, which will be allocated by the board, following prioritisation and assessment of the cost vs. benefit.
- Variable activity driven by regulatory mandate: New work may be prescribed by future regulation. However, at this stage, it is not possible to determine what form this will take, and

therefore it has not been possible to quantify this. When the regulatory landscape, including for Open Finance and Smart Data, becomes more concrete, it will be possible for the board of the Future Entity to build anticipated costs into their Annual Budget, for review, approval, and funding, by its Members. Members will be incentivised to finance this work, given the regulatory mandate and their need to meet their regulatory requirements.

2a) 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?

Within the UK Finance proposal, we are confident that all of the necessary functions that the OBIE undertakes (as outlined in the Service Capabilities section) will be brought forward into the Future Entity, to ensure that the Open Banking remedies continue to be effective going forward. In fact, we believe that the proposal goes significantly further than the minimum requirements to ensure compliance.

However, if the CMA identifies any areas required under the Order, which it believes the Future Entity will not meet, then they should communicate this. This can then be reviewed by UK Finance, and/or the Transition Group, for consideration regarding how to incorporate these requirements into the plans.

2b) Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:

- What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?
- 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?
- 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?

As outlined in the introductory comments to this section, the ASPSP funding will be primarily allocated to cover the costs of the Fixed Activities (e.g. the Directory), which will ensure that TPPs and ASPSPs are able to access the services required to adhere to the Open Banking Remedies.

Should the anticipated external revenue opportunities materialise, then the residual funding provided by the ASPSPs will reduce. However, if these revenue opportunities do not materialise, then ASPSP members will be expected to continue meeting their annual funding requirements, on a proportionate basis. By this stage, it is anticipated that these BAU workstreams will be delivered cost-efficiently.

Further outlined in the introductory comments (and section 8.3 of the UK Finance paper), in addition to the core fixed activities, a large proportion of the 'new delivery and change' activity (e.g. Premium API development) will be proposed and funded by Participant Groups. The funding of these one-off development projects have not been accounted for in the future cost and income projections¹², as it

¹² Open banking futures: blueprint and transition plan, UK Finance, 2021, page 29

is not possible to anticipate the quantity, size and scale of these at this stage. This will be determined through market forces and demand.

2c) 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?

The services provided by the Future Entity can be broken down into three broad categories. Firstly, there are the core services that a regulated actor will need to access to meet their ongoing requirements. This will be free for TPPs, to avoid any potential barriers or obstacles under PSD2. Secondly, the Future Entity may identify value-add services, such as ticket management, which fall outside of the mandated services. The TPPs may in future, subject to board decision, be asked to pay a contribution to access these value-add services. Thirdly, there is the development of 'new delivery and change' work / Premium APIs, proposed by the Participant Groups. If TPPs have been a part of that Participant Group, then they may be asked to partly fund the development work that the Future Entity undertakes for that project.

The second two categories should be partly paid for by TPPs, so that they have 'skin in the game'. This will ensure that the parties proposing new work to be undertaken by the Future Entity, see sufficient value in the work, such that they are willing to part-fund its development. This will reduce the potential risk that new change work could be put forward by firms, who ultimately do not end up utilising the output. This will help to ensure that the Future Entity is responding to market demand, prioritising development work and innovations that are supported and required by the industry.

We do not anticipate that Retailers would provide BAU funding to the Future Entity, however, should they choose to join any Participant Groups, they may provide funding to the Future Entity to support the development of projects from that group.

2d) 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 onboarding services that OBIE provides to help TPPs interface with ASPSPs. Can the CMA and other stakeholders be confident that these will be maintained?

As outlined above, there will be 30 service capabilities (including the onboarding services) that will form the Fixed Activities that the Future Entity undertakes, which will transition across from the OBIE.

If the CMA has any concerns that specific elements of the OBIE capability are not being planned to transition across to the Future Entity, then they should communicate this. This can then be reviewed by UK Finance, and/or the Transition Group, for consideration regarding how to incorporate these requirements into the plans.

2e) 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?

No further comments.

3. Representation of consumers and SMEs

3a) Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?

Yes, we believe that the proposal presented by UKF is sufficient to ensure effective representation of consumer and SME interests. The first bullet point under Vision and Mission starts "*The Future Entity prioritises end-users' outcomes...*". This demonstrates how the consumers and SMEs that will ultimately use Open Banking propositions, are the priority.

Furthermore, ASPSPs, and many TPPs, are consumer facing businesses, who therefore seek to provide products and services that meet the needs of their customer base. They will also continue to fall under the FCA's regulatory oversight, who prioritises the fair treatment of consumers and SMEs, and good customer outcomes.

Primarily, there are two key areas for consideration, when ensuring that good consumer and SME outcomes continue:

- Ongoing maintenance of the standards: Through the creation and development of Open Banking under the Order, good customer outcomes have been at the forefront. As the implementation phase nears completion, the Future Entity will now need to ensure that these standards and guidelines, which have been designed with consumers and SMEs at the fore, are maintained. Separately, the monitoring of firms' compliance to the Order will continue (as addressed in section 5).
- Future development: The proposed work that the Future Entity undertakes will primarily be market-driven. New items can be raised by anybody, and firms will inevitably adopt those that lead to good consumer and SME outcomes, so as to meet the needs of their customer base. A free and open market responds to demand, and therefore the 'new delivery and change' work delivered by the Future Entity, proposed and funded by Participant Groups, will benefit from putting the customer at the fore.

3b) Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?

We believe that the interests of consumers and SMEs will be adequately represented by the same board member, and also by the other members of the Board. Whilst there will be one person on the Board dedicated solely to the interests of consumers and SMEs, the remainder will inevitably have consumer and SME interests in mind also e.g. in the case of TPPs and ASPSPs, as these are their

customers. Furthermore, consumer and SMEs will be represented through members of the Advisory Committee, and likely on Participant Groups as well.

As a customer-focused organisation, Barclays' approach has often been to undertake customer research to understand in detail their preferences and how they expect us to behave. Early on, Barclays commissioned research with Faith Reynolds, to understand the opportunities and concerns regarding Open Banking, from both a consumer and SME perspective¹³. This customer-driven approach has led to us taking key decisions regarding how to build our third-party-access, including our delivery of Open Banking through mobile channels a year ahead of the rest of industry. Barclays therefore believe that we will also look to represent the interests of our customer base when engaging with the Future Entity either through the Advisory Committee, and/or the Participant Groups, and we believe that this would also be the approach of many ASPSPs and TPPs.

Whilst we believe, therefore, that the interests of consumers and SMEs will be sufficiently represented on the board, if the CMA deem it highly important that there is a consumer board member and an SME board member, then this could be considered.

3c) 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?

The appointment of the Consumer Representative board member should follow the same process as for the other independent NED board members i.e. the Chair (or Interim Chair) owns the process to appoint the independent non-executives, through an independent process to identify people with experience and a broad knowledge of financial services, as well as consumer experience and consumer policy. The UK Finance proposal recommends that the Consumer Representatives on the Board and Advisory Committee should work for Consumer Organisations. Barclays supports this approach.

The needs of vulnerable customers are of course a key priority for regulated firms within financial services, therefore ensuring that the Consumer Representative has knowledge of a broad set of consumer and SME needs, including those of specific groups such as vulnerable customers, will be of importance.

It is worth reiterating that the Board will not be proposing 'new delivery and change' work for the industry to undertake. This work will be put forward (and primarily funded) by Participant Groups and/or future regulation. The Board will oversee, to ensure that the work of the Future Entity continues to be effective in meeting its Vision and objectives.

¹³ Open Banking: A Consumer Perspective, Faith Reynolds, January 2017

4. Sustainability / adaptability

4a) 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?

The UK Finance proposal¹⁴ outlines that ASPSP membership will last a minimum of 2 years, and CMA9 membership an initial 3 years. We believe that this commitment will be sufficient to ensure continuity, and give the Future Entity time to form and stabilise in the industry.

The Order does not require membership of a specific directory service following the implementation of the Final Roadmap. The CMA9 would be able to comply with their regulatory obligations under the PSRs by registering with other competing directory services (e.g. in Europe, directory services are provided competitively in the open market). Even if one or more of the CMA9 were to withdraw from the Future Entity, they would continue to be required to comply with Part 2 of the Order, and to self-attest annually/self-report breaches (see more detail on this below). Therefore withdrawing from the Future Entity would not create a risk for the continued provision of read-write data under Article 14 under the Order, and for the ecosystem and ultimately, consumers and SMEs.

However, we agree that the desire for CMA9 members to remove membership would be very limited, given the risk of disruption when moving technical services to a new provider. That being said, enabling the ability for firms to remove membership will drive competition, and keep the focus of the Board and Executive Committee on delivering valuable services to industry, in a cost efficient and effective manner. It is essential that the Future Entity remains competitive, to ensure optimal opportunities for innovation and competition. The three-year commitment strikes the balance between enabling the Future Entity to stabilise, whilst also keeping it competitive and focused.

4b) 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?

To date, non-CMA9 ASPSPs have been able to enjoy the benefits of the industry-led standards development, directory services, and other services such as the support desk, whilst providing a nominal contribution to funding the OBIE.¹⁵ Going forward, the proposal is that the Future Entity’s annual funding requirements will be covered proportionally by all member ASPSPs¹⁶, not just the CMA9. Furthermore, the entity may obtain funding through external revenue opportunities. ‘New delivery and change’ work proposed by Participant Groups will also primarily be funded by those

¹⁴ Open banking futures: blueprint and transition plan, UK Finance, 2021, page 19

¹⁵The OBIE rate card outlines that full access to OBIE services costs £[><] per year (or less, if only certain services are required), from 1 January 2020 onwards. Until that point, it was [><].

¹⁶ Open banking futures: blueprint and transition plan, UK Finance, 2021, page 7

Participant Groups. This model seeks to rebalance the funding of the Future Entity, such that its funding is distributed more evenly across the ASPSP community, supplemented by other revenue opportunities and additional participant funding for specific projects (per the Participant Group change model).

4c) 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?

There are capabilities within the Future Entity that will enable it to support future initiatives such as Open Finance and Smart Data. However, as these initiatives are as yet undefined by government and the regulator, it is not possible to design the Future Entity in such a way to ensure that it accommodates any specific requirements. It will therefore be important to keep the core capabilities running, and develop this vehicle for efficient and effective collaboration of market participants to design and develop future standards for the benefit of industry. Then, when the future regulatory landscape becomes more defined, it will be possible to outline what role the Future Entity can play in facilitating firms to meet those requirements. Part of the vision is to “*continue to provide a platform for UK Financial institutions to meet their regulatory requirements*”¹⁷, therefore it is clear that this is an aim of the future entity.

4d) 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?

Firstly, PIS invoke payments on today’s payment system, and the firms (TPPs and ASPSPs) have regulatory commitments to their respective regulators in regards to the roles they play under this framework. Furthermore, these firms will engage with regulators on the evolving landscape of PIS payments, for example we would expect all firms in the PIS market to be engaging with the PSR on its recent call for views on consumer protection in interbank payments¹⁸. We would anticipate that the Future Entity would keep abreast of any future regulatory developments in the PIS landscape, to help facilitate any regulatory required output that requires industry collaboration e.g. standards development, per the Future Entity’s vision to “*continue to provide a platform for UK Financial institutions to meet their regulatory requirements*”.¹⁹

Furthermore, as payment initiation (by the PISP) and processing (by the ASPSP) is dependent on the underlying infrastructure, it is incumbent on the new entity to work closely with the Scheme companies that provide the underlying payment infrastructure. We envisage the relevant PIS Participation Group within the new construct to invite participation from Pay.UK for example, or the relevant respective payment scheme companies.

Future introduction of ‘new delivery and change’ work will be delivered through market-driven demand, through the proposed Participant Group change model process. When proposing new work

¹⁷ Open banking futures: blueprint and transition plan, UK Finance, 2021, page 6

¹⁸ CP21/4 – Consumer protection in interbank payments: call for views, PSR, Feb 2021

¹⁹ Open banking futures: blueprint and transition plan, UK Finance, 2021, page 6

that may impact PIS, it would be recommended that firms also engage with the necessary regulators, through the Participant Group model.

4e) 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?

No further comments.

5. Monitoring Arrangements

5a) 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 given the responsibility for monitoring the compliance of the CMA9 with the Order?

Ongoing compliance monitoring of CMA9: We agree that the Future Entity should not undertake compliance monitoring. It would not be appropriate for it to do so, as it is being set up to promote the Open Banking ecosystem, and to increase innovation and competition. Asking it to monitor the CMA9, when it is designed to support the Open Banking functionality on behalf of a broader range of stakeholders, could present a potential conflict.

We would instead suggest that the most efficient, appropriate and proportionate option would be for the CMA9 to self-report any possible breaches of Part 2 of the Order, in the same way as for other parts of the Order. CMA9 would continue to attest to compliance with Part 2 of the Order in their annual compliance reports.

Further, the FCA will continue to have oversight of Open Banking under the PSRs and will consider availability and performance, as well as whether there are any barriers to TPPs. This should provide an additional level of comfort to the CMA.

Management information: The CMA9 would continue to provide same level of MI as they currently do to the Future Entity, to ensure continued transparency; and this MI would be published in the same way as currently published by OBIE. The Future Entity could decide to broaden the scope of MI in the future. This would be an industry-led decision, and would apply equally to all ASPSPs which are members of the Future Entity.

5b) 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?

The Future Entity is being set up in such a way as to promote increased competition and innovation, and the ecosystem would be a future state, removed from Part 2 and the Open Banking implementation obligations on the CMA9.

The Future Entity will be producing data relating to how the ecosystem is working. This would include data from all member ASPSPs and TPPs, and would therefore provide a more accurate reflection of how the ecosystem is functioning.

In any event, ecosystem monitoring falls outside the scope of the RBMI Final Report and Order. To the extent that the CMA decides it would in fact be proportionate to appoint a separate monitoring trustee to consider compliance with the Order, it would clearly be outside the remit of such entity to undertake ecosystem monitoring and/or suggest “*product or other developments*”. Irrespective of the decision taken on the question of monitoring, there should be a clear and well-articulated delineation between compliance with the Order and consideration of further potential policy issues relating to Open Banking (or indeed broader product initiatives). Furthermore, the UK Finance proposal for the Future Entity would enable the ecosystem itself to drive further innovation and development, through the Participant Group model.

5c) 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?

While true that the CMA has previously appointed independent professional services firms, this has always been to oversee specific deliverables:

- The CMA has only required the appointment of a professional services firm as a monitoring trustee in respect of three market investigations to date, in each case to oversee a divestiture process, which was clearly limited in scope and duration, the appointment lasting 7-16.5 months.²⁰
- Although more commonly used in the case of mergers, the appointment of a monitoring trustee is also limited in scope (to ensure delivery of specific requirements, e.g. divestment process, or to ensure that interim undertakings are adhered to by the merging parties) and duration.
- In any event, it is not appropriate to conflate the appointment of a monitoring trustee in the case of mergers, with that in the case of a market investigation. A merger situation is voluntary, and the chosen path of the parties; whereas in the case of a market investigation, any remedies are imposed by the CMA. The Open Banking remedy was an outlier, and the appointment of the Implementation Trustee/OBIE should not be considered a precedent for the best course of action going forward.
- The CMA must have regard to the costs incurred on this remedy to date, as against the AECs it was seeking to remedy.
- Any proposal for the CMA, five years on from the RBMI Final Report, to now appoint a monitoring trustee would be onerous and disproportionate – highly expensive, as professional services firm would need to get up to speed and monitor nine different parties; with no apparent end date, which would be highly irregular. Parties can self report (see response to Q5a) above), as they currently do for other parts of the Order.
- As outlined throughout this response, we remain committed to Open Banking, and the ongoing provision of MI via the Future Entity would demonstrate our continued compliance with the specific requirements of the Order. Once the Final Roadmap is complete, monitoring

²⁰ (Supply of Privately-Funded Healthcare Services in the United Kingdom (2014); Supply or Acquisition of Aggregates, Cement and Ready Mix Concrete (2014); BAA airports (2009))

becomes more objective, and as such it would be even less proportionate for the CMA to appoint a third party to oversee it. See response to Q5d below.

5d) 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.

Any assessment of compliance with Part 2 of the Order should now reside with the CMA's remedies team. It is worth noting that all the Trustee and CMA directions regarding Part 2 so far have related to the *implementation* of roadmap items. This would all fall away once the Final Roadmap is completed, and the ongoing provision of MI would provide an accurate picture of performance to the CMA, as set out in more detail in the response to question 1 above.

We appreciate that some of the discussions we have had with the CMA in relation to Open Banking and APIs, since our original presentation to them on the topic in 2015, have not always been straightforward. However, we consider there is a distinction to be drawn between potential breaches in relation to implementation of Open Banking, and consideration – once the Final Roadmap is finalised – of whether the CMA9 remain in compliance with their obligations under the Order. The CMA's remedies team and its Head of Open Banking should be able to undertake any future assessments as to whether there has been a breach of the Order without assistance from a third party (Future Entity or a monitoring trustee), in the same way that the CMA assesses possible breaches of other parts of the Order, as well as its other market investigation remedies. If it would help to reassure the CMA, we would be happy to discuss this point further and/or provide an example of the data that we could provide the CMA as part of our annual attestation/on request. We would urge the CMA to take a proportionate and evidence based decision as to whether it is necessary for any third party to be involved in screening or monitoring compliance.

In addition to their legal obligations under the Order to report breaches, and the potential consequences for the CMA9 of not doing so, the ecosystem should be viewed as self-correcting, as if one of the CMA9 failed to report a breach of their obligations under Part 2 of the Order, this would in any event be reported by one of the TPPs, who would raise it with the FCA. Furthermore, we understand in any event that the TPP community has recently recognised the stability of the ecosystem.²¹

5e) 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?

We do not consider it necessary or proportionate at this stage in the development of Open Banking for there to be ongoing monitoring of compliance by either a monitoring function equivalent to the Trustee's monitoring function or a third party, given the role played by the FCA in relation to Open Banking.

²¹ See para 1.34 of IESG meeting minutes of 27 January 2021, <https://www.openbanking.org.uk/wp-content/uploads/1.-Minutes-27-01-2020v0.2.pdf> : "GL was pleased that the technology conformance is becoming more stable, consistent and there is high availability, with response times also improving."

Open Banking is now a fundamental part of the retail financial services ecosystem, and it would be disproportionate to impose additional monitoring obligations on it; in contrast to systems such as FPS.

Until such time as the Order is revoked, the CMA9 intend to continue to report breaches of Part 2 to the CMA and to include attestation of compliance with Part 2 in their annual Order compliance reports submitted to the CMA each February.

5f) Are there any other issues regarding monitoring and compliance which the CMA should be aware of?

In addition to the issues outlined above, the CMA should consider the realistic possibility that, should a new third party be appointed as a monitor, without the considerable background and expertise that the CMA has in relation to Open Banking, there is a high likelihood that this could lead to an increased volume of information requests and meetings for the CMA9 compared to self-reporting. This could detract from the time and resources, which the CMA9 are able to dedicate to innovation and continuing to grow the ecosystem. The CMA should consider this as part of its proportionality assessment.

TPPs and the CMA9 have robust incident management procedures in place, which highlight incidents for resolution; additional monitoring is not necessary and neither will it increase efficiency or effectiveness in the ecosystem.

6. Transitional arrangements – design considerations

6a) 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?

Service disruption can be caused by many different risk factors, ranging from cyber risks, operational risk, and unforeseen issues. However, the risk of disruption to ongoing services should be relatively minimal, as there are no changes being made to the underlying services or technology (which inevitably would cause a greater risk of disruption), rather a 'lift and drop' into the new legal structure. The transition risks are further explored in section 9.3 of the UK Finance proposal²².

In order to mitigate the risk of disruption during the transition process, we need to ensure that OBIE management time is committed to BAU work, whilst the Future Entity is being set up and operationalised.

Furthermore, the proposed approach of establishing a Transition Advisory Group to drive forward the formation of governance and processes seeks to de-risk the transition.

²² Open banking futures: blueprint and transition plan, UK Finance, 2021, page 36

6b) 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?

A general recommendation when making any transition is that you do not turn the old function off before the new one is ready. Therefore, the new monitoring process should be defined, established and functioning, before the Trustee's monitoring ends.

The transition of the OBIE's work to the Future Entity is a separate piece of work to the handing over of monitoring, and therefore these two items do not need to be working in absolute tandem. Once the new monitoring process is suitably established, there would be no need for the Trustee's monitoring to continue, irrespective of the state of the transition of the OBIE's work to the Future Entity.

6c) 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?

The Interim Chair should be appointed first, followed by the Transition Advisory Group. This group will oversee the establishment of the Future Entity, including the hiring of the new Board, with clear roles and responsibilities defined. Once the board and new Chair are in place, the responsibilities will be handed over to them.

The OBIE should also be partly responsible for the smooth transition to the Future Entity. The OBIE senior team remuneration and bonus structure should be contingent on a smooth transition.

6d) 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?

There are three core components required for the completion of an item under the Final Roadmap:

- 1) Design: This work is undertaken by OBIE, in consultation with its members. Once a final design is agreed upon, the Technical API Standards / MI Standards / Customer Experience Guidelines / Operational Guidelines (as applicable) are updated.
- 2) Definition of whether an item is Mandatory for CMA9: The Trustee must determine whether a new Final Roadmap item is deemed mandatory under the Order, or optional.
- 3) Delivery by the ASPSPs and/or TPPs: Optional items may be delivered at any time (or not) by ASPSPs or TPPs. Mandatory items must be delivered by the CMA9, within an agreed timescale.

So long as items 1 & 2 in the above list are complete, then the work of the OBIE is complete. Item 3 does not need to be finished prior to transition to the Future Entity, as the CMA9 will continue to be monitored via the new process. It would therefore be required that the CMA9 attest to the CMA that they have completed delivery of an item, or inform the CMA of any delay, and their proposed route to completion.

We would anticipate that, for the majority of the remaining Final Roadmap items, parts 1 and 2 will be completed prior to transition. If there are any design requirements remaining at point of final transition, then these can be passed into the Future Entity, which will have the resource and capability to complete this work. Anything in the Final Roadmap that is clearly contingent on a different regulator (e.g. the FCA, or the ICO), is effectively outside of the OBIE's remit anyway, and is something that they are undertaking for the benefit of the ecosystem. Given the Future Entity is in part being established to enable firms to meet their regulatory requirements (per its Vision), this will be a suitable and appropriate vehicle to house this type of work. Finally, firms will still be monitored through the new monitoring process, and therefore this should limit the risk of non-completion.

We should therefore not delay the transition to the Future Entity. If we wait until the Final Roadmap is 100% complete before transitioning across, then inevitably there will be a 6-9 month window where the sole focus of the Future Entity's work will be the transition, therefore stalling progress across the ecosystem that could be being made. During this time, the OBIE will not be able to progress any future work, as they will not have any regulatory mandate through which to do it. This would risk stalling the thriving ecosystem that has been created. The benefit of transitioning whilst the final few Final Roadmap items are being completed is that by running this in tandem, you enable the Future Entity to pick up with the new Change Model for delivery at the same time that the OBIE mandate comes to an end.

6e) 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?

We are not expecting any new Final Roadmap items, as the implementation phase is coming to an end, therefore we do not anticipate there being any new mandated development work. Where a set of participants want to set up a Participant Group to define and fund 'new delivery and change' work, then this should be possible during the Transition period. However, the involvement of the Future Entity would have to be considered in the round at this time, to determine how established the entity is, and to ensure that their involvement would not impact upon the smooth transition. At the outset, the priority should be ensuring smooth transition first and foremost, and then once the Future Entity is ready to undertake additional new delivery and change work, then they should do so.

6f) Are there any other issues regarding transition arrangements which the CMA should be aware of?

The CMA should seek to ensure that we maintain focused on the conclusion of the Final Roadmap, and that the scope of existing Final Roadmap items remain tight and focused. Furthermore, the CMA should encourage and support a prompt transition to the Future Entity, as delay could disrupt future innovation outside of the Order by 6-9months (as outlined above, in response to Q6d).