



COADEC RESPONSE

CONSULTATION: THE FUTURE OVERSIGHT OF THE CMA'S OPEN BANKING REMEDIES

ABOUT COADEC

The Coalition for a Digital Economy (Coadec) is the policy voice of UK tech startups and scaleups in Westminster, Whitehall and Brussels.

Since 2010, we have worked to engage on behalf of tech startups in public policy debates in the UK across a range of priority issues for startups including access to finance, immigration and skills, and technology regulation.

Our work, which fights for a policy environment that helps early-stage British tech companies grow, scale and compete globally – has seen many successes from the establishment of the Future Fund and the expansion of the Tier 1 Exceptional Talent Visa, to the delivery of the UK's Patient Capital Fund.

We work directly with the Government across a range of issues; our Executive Director sits on the Government's Digital Economy Council with the Managing Directors of GAFA firms; the Department for International Trade's Telecoms and Tech Trade Advisory Group; and the Government's Jet Zero Council.

With over 3,000 startups in our network, Coadec was instrumental in building a coalition of 50+ investor & community groups from across the country and organised the Save Our Startups Campaign. We worked constructively with departments across HMG to help design and implement the support package available for startups during the ongoing crisis. We also provided advice and technical support to local government (Liverpool City Region) and devolved administrations (Scottish Government), to help formulate their own response to the crisis.

INTRODUCTION

The Open Banking Implementation Entity (OBIE) has done a good job over the last five years building and developing open banking in the UK. As we look to a Future Entity (FE) we should build on the work done by OBIE but not replicate it, specifically the development of detailed API standards. Five years ago it became a legal requirement for TPPs to have access to consumers' payment account data, so TPPs needed access but Account Servicing Payment Service Providers (ASPSPs) didn't know how to give it to them. The CMA's solution was to create the OBIE. What the CMA could not have foreseen, but has become a reality, is the introduction of networks - companies whose sole purpose is to build and provide API based access to banks and Fintechs. This means the original CMA market failure identified



in the Retail banking market investigation is no longer there.¹ Consumers, now more than ever have more options available to them focused on making their finances easy to understand and work for them.

The market failure that required the OBIE, as we know it today, to exist was due to ASPSPs lack of technical expertise. That technical expertise deficit has been solved either by the ASPSPs upscaling or, and more commonly seen, through network companies like Plaid, TrueLayer and Yapily. As such the FE doesn't need to solve that market failure for open banking or open finance.

Looking at the open banking ecosystem today there is a new market failure, API performance and availability. ASPSPs still lack the technical expertise to ensure their APIs are performing as required by the market. Network companies have been working hard to overcome these challenges in performance but we ultimately need support from the CMA and FE. Ensuring API performance and availability will be met by a 200 person committee designing APIs.

One of the key functions of the OBIE is the monitoring of ASPSPs APIs. Open banking is only successful if the APIs underpinning access are robust and stable. This is a key responsibility of the OBIE that needs to be transitioned to the FE, to ensure the next stage of open banking is successful the market needs an entity that leverages market data and possesses significant dispute resolution capabilities.

Five years later, we are still seeing some ASPSP APIs failing to meet the performance and availability requirements.² Once TPPs can rely on the interfaces provided by ASPSPs, our members will be able to deliver more open banking products and services. In turn, we believe that this will enable consumers and businesses to build confidence in open banking and to ultimately realise the benefits of open banking and open finance.

In summary, our key asks of the CMA as they consider the future oversight of the open banking remedies are;

1. The market failure isn't access anymore, its performance and availability - we need to solve this new market failure by moving from an API standards approach to monitoring and enforcement.
2. More enforcement is needed - it has been five years since open banking was introduced and yet we are still having difficulties with API performance and availability.

¹

<https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk>

²

<https://standards.openbanking.org.uk/operational-guidelines/availability-and-performance/key-indicators-for-availability-and-performance/latest/>



3. Market monitoring needs to continue - one of the key functions of the OBIE is the monitoring of APIs, we need this to continue if we want open banking and open finance to be successful.

Below is our response to the consultation. We would be delighted to support the CMA and FE going forward as you consider the future of open banking.

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

We agree with the CMA and believe that votes being weighted by participant type can and will lead to particular stakeholders and/or stakeholder groups having a higher degree of influence. As such, we would recommend that every participant has an equal vote. Open banking impacts all participants in different ways, their voices and concerns need to be heard and represented equally by the Chair.

The process for determining the Chair needs to be transparent and inclusive of all parties operating within the open banking ecosystem. As the initiator of the open banking remedies, we would recommend the CMA, as the lead on the open banking remedies, leads on the process and works with open banking firms (ASPSPs, TPPs and Trade Associations) to nominate individuals they feel are suitable for the role and meet the criteria. Given the market impact of the Chair position, we would strongly recommend the CMA in collaboration with industry work to identify potential candidates for the Chair. To ensure an unbiased and independent Chair is selected we recommend the CMA make the final decision.

- 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?**

Yes, based on Figure 1 in the consultation we feel that the composition of the Future Entity Board constitutes independence. We are especially supportive of separating small ASPSPs, large ASPSPs, AIS and PIS and allowing each to select a representative. This approach will ensure every actor in open banking gets the opportunity to provide their views and insights into the future of open banking.



To ensure the FE Board remains independent we would strongly recommend the CMA review the composition of the Board every two years. Innovation is driving a lot of significant change within the payment sector, new entrants we didn't know about are entering the market every day. Within open banking, new entrants include “networks” , who act as middlemen between banks and smaller fintechs. At the moment there are only a few data aggregators in the UK, however as open banking leads to open finance we see this type of provider growing. As such reviewing the number and type of representatives on the FE Board would be useful as new players join the market.

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?

Yes, we would strongly suggest that the Board be accountable to the CMA and the membership of the Future Entity. Decisions made by the Board will directly impact TPPs and ASPSPs ability to do business given this impact, we would strongly encourage the CMA to impose the transparency and reporting requirements currently imposed on the OBIE. As open banking moves to open finance we want to ensure all key decisions are made in a transparent, consumer and market-focused way.

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.

We are not an ASPSP, so we cannot specifically comment on the competing interests of the CMA9 and the FE Chair. That being said, the implementation of open banking in the UK was a success because ASPSPs, OBIE and TPPs worked together and decisions made by the CMA and OBIE were transparent and shared with the wider ecosystem. Consumers are increasingly relying on digital services more than ever, with the majority of those services being powered by open banking APIs. As consumers become more and more reliant on open banking powered products and services, ASPSPs will have to support and work with the FE and TPPs by providing access to payment account data if they want to continue to compete with other ASPSPs and keep their consumers happy.

We feel one method to ensure the Chair can resist pressure from ASPSPs is to make the position tenured, we will provide more detail in our response to question number 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?

Yes, we are concerned about the ability of the Chair to remain independent if they can remain in situ for an undefined period. The Chair at other regulatory bodies (e.g. the CMA, FCA, and PSR) are appointed for a five-year term. After that time, the Chair can continue in their role or a new Chair can be appointed. Introducing a five-year appointment term would allow the CMA and FE Board the opportunity to review the Chair's independence, ensuring they remain the best candidate for the position.

We are also concerned that the Membership of the FE would only be informed of the strategy proposed by the Chief Executive - see Figure 2 in the consultation. Given the direct impact on TPPs and ASPSPs businesses, we believe that any strategy proposed should include a consultation by Membership participants.