

Credit Kudos

Response to the CMA Consultation on the future oversight of the CMA's open banking remedies

April 2021

About Credit Kudos:

Credit Kudos is an authorised Credit Reference Agency and Open Banking Account Information Service Provider (AISP) that uses financial behaviour to measure creditworthiness. Credit Kudos was one of the first handful of companies in the UK authorised as an AISP in early 2017 and an early commercial user of Open Banking APIs. Since our founding in 2015, we have been an active and vocal member of the Open Banking community.

Through direct connections to the UK's largest banks, Credit Kudos aggregates and interprets transaction data for use by lenders, brokers, and financial institutions. Credit Kudos goes beyond traditional scoring, providing a comprehensive view of a borrower's creditworthiness. We transform complex sets of information in our easy-to-use, digital first tools to help everyone make better lending decisions through our five core solutions: Income Verification, Affordability Insights, Risk Insights, Fraud Prevention and Customer Management.

a) 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?

We agree that the proposal to weight voting rights by participant type risks giving disproportionate influence to ASPSPs, who already benefit from a high degree of market power and whose compliance with Open Banking specifications the future entity must be responsible for ensuring. As referenced in the consultation, ASPSPs’ interests are not necessarily neatly aligned with the objectives of Open Banking, and this to be carefully considered when deciding on the governance framework for the Future Entity.

In terms of candidate selection, our view is that nominations for Chair should be solicited from members of the Advisory Committee and voted on by members, with the elected candidate subject to approval by the CMA.

We are also concerned that the proposals do not impose a limit on the Chair’s tenure. Particularly considering it is likely that the focus of the Future Entity will (or at least should) evolve with the expansion and development of Open Finance, it seems sensible to allow for a new Chair to be elected periodically (e.g. every five years in line with the FCA and CMA).

b) 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?

While we are satisfied with the proposed board composition in terms of number of seats allocated to different stakeholders, we feel that there is risk that the independence of elected board members is not assured under the suggested framework. For example, it is envisaged that the Chairperson will play a crucial role in appointing NEDs, but as outlined above, the existing proposals for appointment of Chair may disproportionately favour the interests of large ASPSPs.

Further, we are concerned that independent representation of stakeholder groups may be undermined if NEDs are selected from particular members/companies, and so would favour a model that promotes appointing representatives of trade associations rather than particular companies.

d) 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?

We agree that there is a risk that the proposed funding model may jeopardize the Future Entity's independence, in that it will be directly financed by ASPSPs in the initial stages.

Separate to the question of independence, we are concerned that the proposals are too vague in relation to funding by TPPs. While we accept that membership fees for TPPs are reasonable, we would like to see a mechanism in place for determining proportionality of fees for different sizes of TPPs (e.g. by transaction volume processed). It is important that new TPPs are not barred from entry into the market by prohibitively high membership fees.

e) 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?

While we do not have any specific concerns (other than those outlined above) regarding leadership and governance on the basis of the proposals, Credit Kudos is mindful that UK Finance is historically closely connected to the CMA9 / large ASPSPs and has played a significant role in the development of these proposals. Combined with the short turnaround time for responses to this consultation, we foresee a risk that the interests of TPPs and other stakeholders may not be adequately or proportionally considered as compared to ASPSPs. As suggested elsewhere in this response, such disproportionate influence in the design of the Future Entity risks further entrenching the dominant position of ASPSPs in the Open Banking ecosystem.

c) 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?

It is difficult to comment on the amount of financial support that should be sought from TPPs when it has not been made clear in the proposals what this is expected to be or how it should be calculated. We are in support of a model which calculates TPP fees on the basis of an objective metric that ensures proportionality (e.g. number of transactions processed annually).

e) 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?

We are concerned that the proposals, as written, see the issue of compliance with API standards as solved, and not something that the Future Entity will be required to dedicate resource to. While we have seen huge progress in terms of API compliance on the part of the CMA9, we still see compliance and availability issues, and we do not consider the ecosystem to be at a point where compliance enforcement can be considered achieved. Deprioritizing this in the work of the Future Entity, and thereby failing to secure ongoing and improved compliance by ASPSPs, risks undermining much of the work done to date in the implementation of Open Banking.

Qa) 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?

Our view is that membership should be compulsory for the CMA9. Threats to cease membership/funding may give a large institution undue influence over the Future Entity's decision making.

Qc) 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?

Yes, we believe that the Future Entity will be well placed to facilitate the roll out of further Open Finance initiatives, although we recognise that some product types (e.g. pensions) will require their own implementation entities. We agree with the sentiments expressed in the FCA's Open Finance feedback statement that a sensible approach in the progression of Open Finance would be to extend open banking's remit to cover non-PSD2 account types first (e.g. savings, mortgages and loans) before more complex product types.