

The future oversight of the CMA's open banking remedies

Response from fire.com



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Objective To outline fire.com's response to the future oversight of the CMA's open banking remedies consultation.

1 Background

In the context of Open Banking, Fire is an ASPSP, a PISP and an AISP. As an Electronic Money Institution, Fire-UK ('the Firm') is authorised to provide various account and payment services in the UK. Fire provides euro and sterling digital accounts for personal users and businesses in the UK and EU. The service is delivered via mobile app and web channels. The business market is the Firm's primary focus. Fire helps businesses to manage payments with digital accounts and debit cards, supporting a range of payment services all accessible via a powerful Application Programming Interface ('API').

If you any questions or feedback around Fire's responses, please do not hesitate to contact Colm Lyon.

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2 Response

The UK Finance proposals

Independent and accountable leadership - We invite views on the following questions relating to the leadership of the Future Entity.

Question	Response
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	The Chair of the future entity should be experienced and independent. In addition the Chair must appreciate the different business models of Open Banking from all perspectives – ASPSPs, TPPs, payers, payees, users and businesses. It is also important to

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?

fully confirm the role and power of the Chair, e.g. do they have the final word on certain decisions and road map items?

While the CMA appointed the Trustee, this was done in the context of the order and as such it provided the Trustee with a frame of reference for decision making. Going forward, there is potential for a strategic void to exist as no formal frame of reference may exist. For that reason the development of a comprehensive strategy should be agreed and if necessary approved by the CMA going forward.

The Chair will provide both independent and vigorous leadership of the whole ecosystem through the next stage of open banking. Fire would suggest that the initial appointment of the Chair is approved by the CMA.

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?

To ensure representation supporting the acceptance of Open Banking payments by businesses, a business representative group could also be included as a board member. The Open banking ecosystem includes businesses which may be underrepresented in the current proposal – specifically in relation to payment acceptance over open banking.

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?

It is our belief that the acceptance of Open Banking Payments could be classified as a “Payment Arrangement” and as such it may require some regulatory oversight. This concept could be achieved within the Future Entity and doesn’t require a separate organisation. Our rationale for this proposal is that the processing of payments under an “arrangement” is likely to require more rules, stricter SLAs on API availability, issues of liability, consumer protection, potential fines for non-compliance etc. than account information services. This is not to suggest that Open Banking Payments is a scheme – Faster Payments is the underlying scheme. We are firmly of the view that, if not a “payment arrangement” then a dedicated payments function is required within the Future Entity to ensure that there is a consistent approach taken across the full market and that barriers to the adoption of open banking payments are addressed. It is critical that the development of Open Banking Payments does not compete with other general open banking or open finance developments.

To ensure a fair and appropriate governance model we believe the board should maintain accountability to the CMA during the transition phase. This could be reviewed once the Future Entity is in a steady state.

<p>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?</p>	<p>This is a difficult question to answer without seeing the precise makeup of the board and the decision-making processes. There certainly is a risk that some ASPSPs could act together in a way that could delay or hinder the overall development of the Open Banking ecosystem. A process of strategy development and approval may be required so that the Future Entity is responsible for developing an Open Banking strategy which must be agreed firstly with the participant groups, then the board and perhaps the CMA has the right to comment on the strategy and the associated actions.</p>
<p>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?</p>	<p>Our primary concern is about addressing the barriers around Open Banking Payments. While the UK Finance proposal goes some way to ensure a better representation for the payment agenda, it is important that the leadership is driven by a strategy that represents the view of a wider set of stakeholders than those that make up the proposed board for the Future Entity. For example, the adoption of Open Banking Payments is a much sought-after business requirement, and its adoption delivers additional competition for payments which may not be in the best interest of all the members of the board, so a wider group that sets out the vision, the strategy and the future of Open Banking may be required. Policy makers, HMT, regulators and businesses also have a deep interest in seeing Open Banking Payments succeed.</p> <p>A risk also exists that into the future there could be more divergence within the ecosystem. At present there are the CMA9 and the non-CMA9. Along with this there are some mandatory and some optional items on the roadmap. It is our view that for Open Banking Payments to fully develop and bring benefits to consumers and businesses then the Future Entity must have a strategic ambition to see consistency across all account providers in the UK – in terms of performance, function and adherence to standards.</p>

Adequately resourced to perform the functions required - We invite views on the following questions:

Question	Response
<p>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?</p>	<p>The framework proposed by UK Finance looks capable of funding the Future Entity.</p>
<p>2. Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:</p>	<p>No comment.</p>

<ul style="list-style-type: none"> • 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? 	
<p>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?</p>	<p>Yes – TPPs should never be expected to pay for accessing the accounts. The concept of Open Banking Payments was that retailers should benefit, so this is not a reason to implement charges.</p>
<p>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 onboarding services that OBIE provides to help TPPs interface with ASPSPs. Can the CMA and other stakeholders be confident that these will be maintained?</p>	<p>We agree that OBIE has done an exceptional job in bringing the ecosystem together. Going forward it must bring more consistency and clarity to the ecosystem by making standards mandatory and applicable to all ASPSPs, especially in the area of Open Banking Payments, which is why we propose the “Payment Arrangement” concept above.</p>
<p>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?</p>	<p>No comment.</p>

Representation of consumers and SMEs - We would welcome views on the following issues relating to customer representation

Question	Response
<p>1. Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?</p>	<p>The consumer representation seems to be adequate. The business interest should be beyond SMEs and should include all business and retailer interest – small, medium, large and enterprise.</p>
<p>2. Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?</p>	<p>Yes, this should be possible.</p>

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?

A general consumer representative is adequate and a specific reference to the needs of vulnerable or less well-off consumers is not required in our view.

Sustainability / adaptability - In considering the sustainability and adaptability of the proposed arrangements, we invite views on the following:

Question	Response
<p>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?</p>	<p>In the context of Open Banking Payments it is imperative that all ASPSPs operate to the same standard. Clearly this is more likely if all ASPSPs are part of the Future Entity and ideally all would sign up to participate in the “Payment Arrangement” noted above.</p>
<p>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?</p>	<p>This is difficult to answer without knowing the specific costs.</p>
<p>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?</p>	<p>This is possible but it is important in our view that the Future Entity in focused on making Open Banking work and that it does create internal conflict between account information and payment initiation initiatives.</p>
<p>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?</p>	<p>The initiation of payments or open banking payments is not a scheme – it is a “Payment Arrangement” whereby ASPSPs and TPP have agreed standards for interoperability and cooperation for the benefit of users. We are firmly of the view that the payments agenda must be a core pillar within the Future Entity and if necessary, this pillar could be</p>

	classified as a Payments Arrangement and subject to some form of regulatory oversight. Otherwise the agenda for competing initiatives such as account information or open finance will dilute the payments agenda. The AIS agenda can be achieved by the implementation of agreed standards, however the payments agenda will need to address issues such as consumer protection, end point availability, refunds, better support for indirect members, scheme (FPS) interface, liability, compliance to the standards and consequences for non-compliance. For these reasons a different solution is required for payments, without which users and businesses will not benefit from Open Banking Payments.
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?	See above.

Questions for consultation

Views are invited on any aspect of monitoring but in particular:

Question	Response
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?	Yes, it is reasonable for the Future Entity to provide data to the body undertaking the compliance monitoring. In addition to the compliance monitoring – which is specific to the order, there may be a wider industry monitoring role which looks at the strategy, vision of high-level objectives of the Future Entity.
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?	See above. So long as it is working correctly, then the Future Entity can undertake this role, but some strategic oversight may still be required.
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	No comment.

or other bodies could be considered? Would it be practicable to find a firm that was not conflicted?	
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.	So long as the process is simple and independent, either approach is acceptable.
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?	For us as a TPP, we don’t mind which regulator takes the lead, so long as it is clear and that there is adequate expertise and resources in the regulatory body.
6. Are there any other issues regarding monitoring and compliance which the CMA should be aware of?	No comment.

Transitional arrangements – design considerations

We therefore invite responses to the following questions:

Question	Response
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?	During the transition period, it is imperative that activity does not stop. In particular work on identifying and correcting the barriers to the adoption of Open Banking Payments should continue. These should be considered within the context of the current roadmap.
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?	The trustee’s role should end as soon as practically possible in the process so that the new functions may be implemented.
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?	Appoint a transition team with a temporary board.
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	The transition should proceed in parallel to the completion of the roadmap.

would need to be put in place to eliminate the risk that the final elements of implementation would be unreasonably delayed or left uncompleted?	
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?	Yes.
6. Are there any other issues regarding transition arrangements which the CMA should be aware of?	No.