



Electronic Money Association

Crescent House

5 The Crescent

Surbiton, Surrey

KT6 4BN

United Kingdom

Telephone: +44 (0) 20 8399 2066

www.e-ma.org

Competition and Markets Authority

Remedies Monitoring Team

By email to: RemediesMonitoringTeam@cma.gov.uk

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To whom it may concern,

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

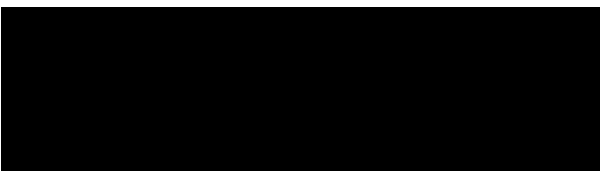
Thank you for the opportunity to provide comments on the CMA's consultation on the future oversight of the CMA's open banking remedies.

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide, providing online payments, card-based products, electronic vouchers, account information services, and mobile payment instruments. Most members operate across the EU, most frequently on a cross-border basis. A list of current EMA members is provided at the end of this document.

The EMA joined the UK Open Banking initiative (OBIE) when it was established; representing non-bank payment service providers on the Implementation Entity Steering Group and participating at all levels of the programme as OB policy and standards have developed. We are very encouraged by the emerging Open Banking ecosystem in the UK and, at this important juncture, we welcome the opportunity to provide input as the CMA considers the future arrangements for Open Banking.

I would be grateful for your consideration of our comments and proposals below.

Yours sincerely,





Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

Summary

Future Organisation - UK Finance Proposals

UK Finance's proposals are an important starting point for developing the future arrangements for Open Banking and the EMA appreciates the resources and cross-stakeholder involvement and consultation that UK Finance employed to produce their recommendations. However, we do not believe that the UK Finance proposals fully meet the four criteria that the CMA have set for success of the arrangements to take forward Open Banking.

Independently led and accountable

The EMA consider that several elements of the UK Finance proposals risk undermining the Future Entity's ability to act independently, and may result in the CMA9 banks having significant influence on the Entity's decision making. In particular, we believe that the proposed funding model in which only the ASPSP-side of the market contributes to the annual funding of the Entity may give rise to unfair advantages for ASPSPs through their position in the ecosystem.

The EMA supports the market-led vision that UK Finance propose for the Future Entity, and that the governance and decision-making models should reflect this approach. However, given the Future Entity's responsibility to support an ecosystem which enables CMA Order and PSD2 compliance, we consider that it would be appropriate for regulators to participate on the Board of the Future Entity in a non-voting capacity.

Adequately resourced

The EMA recognises the balance required to ensure the Future Entity sustains the existing core services required by the Open Banking ecosystem whilst supporting future growth. However, the UK Finance proposals that the CMA9 commit funding for only an initial 3-year period introduces an inherent risk that the Future Entity will not be able to take a long-term strategic view, and drive forward competition and innovation as anticipated in the CMA's open banking remedies.

The EMA suggests that the CMA consider the funding model of the Future Entity that will be required to sustain the strategic vision of Open Banking, rather than simply reducing the CMA9's funding commitments as soon as possible. We also suggest that the funding model should allow TPPs to become voluntary 'annual funding' participants from the outset, and that the Entity governance structure is designed to allow for further types of 'funding' members to possibly participate in the future (such as those from the demand-side of the market – merchants, large corporates, etc). This will enable the Future Entity to foster a viable

commercial environment for all market participants and propel the UK towards strategic Open Finance initiatives.

Dedicated to serving the interests of consumers and SMEs

Given the broad range of interests across the Open Banking end-user ecosystem we do not believe that the proposals have been developed far enough to ensure the Board of the Future Entity is kept sufficiently informed of end-user views. The single consumer Board representative and Advisory Committee representation does not seem to adequately support the proposed vision for the Entity to “*..prioritise end-user outcomes..*”.

The EMA suggests that the future framework includes formal arrangements for end-user Board representatives to consult and seek views from end-users, such as forums, which would be distinct from the Advisory Committee.

Sustainable and adaptable to future needs of the ecosystem

As we note above, the EMA believes the proposed arrangements where the CMA9 make an initial 3-year financial commitment may fundamentally undermine the Future Entity’s ability to make long term strategic plans. We also agree with the CMA’s assessment that if one or more of the CMA9 banks withdraw from the Future Entity, there is the risk that it could jeopardise the stability of the entire live ecosystem on which TPPs and end-users rely.

The EMA proposes that if the funding model of the Future Entity were to be open to the whole market from the start, coupled with a longer funding commitment from the CMA9, these risks could be mitigated, and the ecosystem would be less likely to face an operational crisis in the immediate future.

Our responses below discuss all of these points in more detail.

Compliance Monitoring Arrangements

The EMA agrees with the CMA’s initial conclusion that the Future Entity should not be responsible for overseeing the CMA9 banks with regards to compliance with the CMA Order or wider PSD2 compliance. Hence, we support compliance monitoring to remain as an independent function.

We believe that the Future Entity should continue to facilitate the collection of detailed real-time data on the performance of the ecosystem that OBIE currently compile, as current regulatory

reporting data is in no way comparable, and market participants could not sufficiently rely on it to assess, maintain, or improve ecosystem performance.

Elements of this monitoring data should be provided to the monitoring function to enable it to assess and challenge the CMA9. Nevertheless, this data will also be critical to the management and evolution of the services provided by the Future Entity and the emerging ecosystem, and in particular, the performance of any new initiatives undertaken.

Transition Arrangements

Maintaining the stability and continuity of the 'live' Open Banking infrastructure during the transition process is critical to the on-going success and growth of the ecosystem. Furthermore, the number of outstanding Roadmap items, particularly with regards to payment functions, suggest that a straightforward cut-off point when OBIE can fully transition to the Future Entity is going to be difficult to achieve.

For these reasons, we do not agree with UK Finance's proposals that the transition should be managed by a separate 'transition team' and we suggest that the Independent Trustee (and Monitoring Function) and the existing OBIE governance remain in place to oversee, and be responsible to the CMA, for the success of the transition process.

We also urge the CMA to instruct the Future Entity to coordinate the successful completion (including CMA9 implementation) of specific outstanding Roadmap items under the oversight of the new Monitoring Function/CMA.

Finally, given the timing of the release of UK Finance's proposals, we note that they were not able to include the impact on the Future Entity of the FCA's proposals to mandate some ASPSPs to develop a dedicated interface for payment account access (FCA CP21/3). This could have significant operational impact on OBIE during the transitional period given the possible volume of ASPSPs joining the ecosystem. Considering there is already a large pipeline of ASPSPs and TPPs working with OBIE to launch Open Banking propositions we urge the CMA to fully assess the continuity of on-boarding and support services to firms currently in transition, and the possible risk to the future ecosystem that any interruption to this support may cause.

We acknowledge that this may have implications for the commitment and funding requirement by the CMA9 banks, and adds complexity to the transition planning and process. However, we consider this complexity is not significant enough to present a reason for not ensuring that the foundations of the Open Banking ecosystem are completed.

Independently-led and accountable

- 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?

Process for Future Entity Chair Selection

The EMA considers that there is a high risk that the selection process of the Future Entity Chair is subject to undue influence by the larger OB ecosystem stakeholders, and fully agree that the process should be further developed. However, we do not believe that UK Finance should be the sole body consulted on the Chair’s selection process and criteria as implied in the question above. The selection process, should be agreed in a fully transparent manner and given that the entity will remain responsible for the artifacts that implement the CMA Order, the CMA should lead the selection and appointment of the first Chairperson.

UK Finance proposals envisage a ‘transition group’ being established to manage the move to the Future Entity model, and recommend a ‘transition chair’ be appointed for this Group to lead the core transition team. We note that the manner of selecting the ‘transition chair’ is not discussed, and the proposed composition of the transition team would appear to lack representation from TPPs or end-user stakeholder groups (pg 36, UKFinance Report).

Without TPP or end-user representation in the transition team, nor a clear understanding of how the transition chair and team will be involved in the New Entity Chair selection process, and set-up of the new governance structure, there is a real risk of the entire transition process being shaped and managed by the banking stakeholders. We therefore, suggest alternative transition arrangements as discussed in our response to the last section of our response below.

Scope of Future Entity Chair Role

The EMA concurs with UK Finance that the Future Entity Chair will be a pivotal role in providing vision and direction for the New Entity, however, the proposals provide a limited, high level, description of the intended scope of role of the independent Chair. So as to inform an appropriate selection and nomination process, the EMA considers that the responsibilities and functions of the Chair need to be established, in an open and transparent manner. (similar to Schedule 1 of the CMA Order, defining the role of the Implementation Trustee).

Oversight of Future Entity Chair Appointment

The EMA believes that the CMA should oversee the appointment of the initial Future Entity Chair. Thereafter, we concur with the UK Finance proposals that the Chair could be appointed by the Future Entity's membership, if the Open Banking Roadmap has been completed and the Future Entity has established a broad, representative membership.

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?

Industry representation

We agree that the initial proposals for the composition of the Board appears on the surface to allow for balanced perspective. However, we note the lack of clarity on Board voting rights and would suggest that further details are defined on the anticipated procedures for nominating, voting, and selecting industry representatives for the ASPSP and TPP independent directors.

We notice two key gaps in UK Finance's proposed model as discussed on p19 on their Report:

1. The initial industry representatives will be nominated by all Members by informing the New Entity Chairperson, but the final selection process is not yet elaborated further.
2. Future TPP/ASPSP representatives on the Board will be nominated and selected by 'Participant Groups'. However, the Participant Groups are currently expected to be organised along product/services lines – PSD2, payment initiation, etc. These groups are likely to contain a mixture of ASPSPs and TPPs, so it is not yet clear how a balanced nomination and selection procedure could be achieved to ensure appropriate industry representation on the Board. However, UK Finance intended the participant groups to refer to the type/role of the member organisation – ASPSP, TPP, TSP, etc –

then again the nomination and selection process requires clarification as many organisations will be playing multiple roles in the market.

Given the breadth of type of participants in the Open Banking ecosystem, even in its nascent stages, we believe there is scope to expand the number of industry seats on the Board from day 1. This will ensure an appropriate balance of representation from all key stakeholders,

Regulator participation

The EMA supports the market-led vision that UK Finance propose for the Future Entity, and consider that the governance and decision-making models should reflect this approach. However, given the Future Entity's responsibility to support an ecosystem which enables CMA Order and PSD2 compliance, we consider that it would be appropriate for regulators to participate on the Board in a non-voting observer capacity.

Looking forwards to Open Finance initiatives, should the Future Entity also encompass these future developments, the governance structure should anticipate additional regulators being present to oversee new activity and the composition of the Board should be reviewed on a regular basis.

CEO appointment process

We note that the UK Finance proposals do not detail the process for selection and recruitment of the Future Entity's CEO. Given the CEO's seat on the Board it is important that the CEO is impartial and we urge the CMA to oversee their appointment process. This will also strengthen the independence of the Board.

Role of the Advisory Committee

UK Finance suggest that the composition of the Advisory Committee mirrors the Board with additional members appointed by the Chair and CEO. The proposals do not yet anticipate a general assembly of all members within the governance and decision-making structure of the Future Entity. Hence the Advisory Committee will provide an important channel to the Board for the majority of members who are participating in the ecosystem, but are not funding the Future Entity. The role of the Advisory Committee requires further definition, in particular with regards to the Future Entity's decision making and representing the interests of all members.

- c) **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?**

The EMA considers that if the funding and governance model of the Future Entity can be designed from the outset to give all stakeholders fair and proportionate membership and influence, then the Board should only need to be accountable to the members in order to fulfil its future objectives. This should involve full transparency on operations, future strategy, and services to all members, including non-funding Members who may only access CMA Order or PSD2 related services. However, we acknowledge this may introduce an oversight risk where the Future Entity is responsible for implementing and managing mandatory requirements.

If regulators are represented on the Future Entity Board (as observers) then the regulators' visibility of strategy and operations should replace the need for reporting, and a clear escalation route is available should issues arise.

- 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?**

The EMA believes that the current proposals for the initial funding model, and selection of the Chair and Board members gives rise to the risk that the CMA9 banks will have undue influence on the design and independence of the Future Entity, and thereafter have significant leverage in the Entity's decision making. We recognise that the CMA9 are seeking to protect their ability to comply with on-going requirements of the CMA Order, but as the ecosystem evolves, and banks also offer more TPP services, the funding model will need to be balanced so as to manage competitive risks.

The EMA advocates an initial funding model in which TPP members can participate, **on a voluntary basis**, to the Annual Funding Requirements of the Future Entity (and pay for services if required) as well as ASPSP members. We acknowledge that this complicates the definition of a fair and proportionate funding model, and that initially the number of funding TPPs may be low.

However, if the Future Entity is not designed and created with an equal participation model it will be difficult, and require further industry investment, to re-engineer in the future.

This alternative funding model has the potential to reduce the annual funding requirements for ASPSP members and mitigate against the future risk of individual ASPSPs withdrawing from the Entity.

We are aware that some market participants advocate a funding model in which all PSPs would fund the Future Entity via the FCA levy (or similar mechanism). Thus ensuring funding according to market size, and support expansion to future open finance initiatives.

The EMA considers that this may provide a transitional funding model which could help ensure that investment continues to support the nascent OB ecosystem, but that ultimately it may frustrate the market's ability and freedom to innovate because:

- The Future Entity would remain compliance driven and may lack the commercial incentives for all participants to move beyond mandated functionality (OB and future 'open initiatives')
- May limit the services that the Future Entity can provide to the market (as cost base may be fixed)
- The funding mechanism could limit the members of the Future Entity to regulated entities which may, in the long term Open Finance context, not be appropriate.
- May act as a barrier to smaller PSPs entering the regulated market when they have no intention of participating in the Open Banking/Finance ecosystem.

For these reasons, any industry-wide levy approach to funding the Future Entity would need to be carefully assessed in light of HMT and the FCA's Open Finance strategy and policy.

- 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?**

No further comments.

Adequately resourced to perform the functions required

- a) 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?**

The EMA believes that the proposed framework will help to ensure continuity of services and infrastructure required to support the existing OB ecosystem, but that the UK Finance proposals that the CMA9 commit funding for only the initial 3 years introduces an inherent risk that the Future Entity will be unable to take a long term strategic view and drive competition and allow innovative solutions to emerge as anticipated in the CMA's open banking remedies.

We urge the CMA to consider the funding model of the Future Entity that is required to sustain the strategic vision of Open Banking rather than reducing the CMA9's funding commitments as soon as possible.

We also consider that our suggestions throughout this response from the selection of the Independent Chair, the alternative funding model, expanded industry representation on the Board, clarification on the role of the Advisory Committee, and ensuring that the Future Entity completes the OB Roadmap activity, will help to establish an Entity which is the foundation on which all market participants can deliver compelling propositions, encourages growth and is positioned to deliver benefits beyond the originally envisaged open banking remedies.

b) 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 reduced budget and competing requests for investment in future developments, including from the Participant Groups?**

The governance and decision-making model of the Future Entity should be structured to allow the Board to manage the Future Entity's budget according to market demand and conditions. However, one of the strategic objectives of the Future Entity should be to foster a viable commercial environment for the market. This will involve recognising the emerging nature of the ecosystem and arranging priorities accordingly.

- 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?**

As discussed in our response above, the Future Entity will play a critical role in determining the price and non-price terms and conditions for ecosystem participants as its services evolve. As ASPSPs can, and do, offer TPP services there is a risk that the new governance and funding structure could give rise unfair advantages for ASPSPs through their position in the ecosystem.

The EMA suggests that the funding model for the Future Entity does allow for TPPs to become voluntary funding participants from the outset, and that the Entity structure is established to allow for further types of 'funding' members to participate in the future (such as those from the demand-side of the market – merchants, large corporates, etc).

- d) 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?**

In the absence of a formal mandate from the CMA, the ecosystem cannot be certain that the Future Entity will continue all of the services in the long term which support the operation of the ecosystem as a whole.

- 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?**

No further comments.

Dedicated to serving the interests of consumers and SMEs

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

We do not believe that a single consumer/end-user Board representative is likely to effectively reflect the broad range of interests and views across the end-user ecosystem and does not seem to adequately support the proposed vision for the Entity to “*..prioritise end-user outcomes..*”.

Equally, it is not clear in the UK Finance proposals whether SME’s are intended to be represented by the same person, or whether one of the other independent directors would represent their interests.

Furthermore, the proposed governance structure does not include details of any end-user forums or groups which could be part of a formal process for the end-user Board member to consult and seek views. The end-user forums, such as consumers, SME, large corporate, government, and merchants, would be distinct from the Advisory Committee which would represent participants or providers in the Future Entity ecosystem.

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

Please refer to our response above.

c) 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?

No comments

Sustainable and adaptable to future needs of the ecosystem

- **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?**

If one or more of the CMA9 banks withdrew from the Future Entity, there is the risk that it could jeopardise the stability of the ecosystem on which TPPs rely to deliver services to end-users. and stifle the emerging trust in and benefits of Open Banking. We recognise that if the review of

service capabilities of the Future Entity achieves cost efficiencies in delivering core services, then it is likely that the Future Entity may be the most effective vehicle for the CMA9 to continue to comply with the ongoing requirements of the Order. However, this introduces the additional risk that the Future Entity remains a compliance-driven organisation, and does not invest in supporting future participant groups or innovations which go beyond the CMA Order or PSD2 as envisaged.

We believe that our proposals for the funding model of the Future Entity to be open to the whole market from the start mitigates against these risks. However, we would welcome further clarity from the CMA on the conditions under which the CMA9 could withdraw from the Future Entity whilst maintaining compliance with the CMA Order.

We also agree that a longer Membership and funding commitment by the CMA9 would help to ensure that the still developing ecosystem does not face an operational crisis in the immediate future.

- **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?**

Ultimately, the benefits of Open Banking will only be achieved if the ecosystem begins to benefit from network effects – more participants, more products and services, more end-users which will drive value to all participants. Hence one of the strategic objectives of the Future Entity must be to increase adoption and participation in the ecosystem. If the membership or funding model of the new entity is designed to place non-CMA9 account providers on a different footing to the CMA9, then this will automatically act as a barrier to non-CMA9 ASPSP participation and suppress the Future Entity’s ability to support competition and innovation.

The Future Entity cannot be operated on a model designed to purely recover the CMA9’s costs of establishing the infrastructure, but must provide a level playing field so that commercial benefits of the current and future infrastructure can be derived for all participants.

- **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?**

It is likely that as the UK further defines its 'open' data strategy and initiatives that an overarching strategic governance body will be needed to oversee and coordinate cross-sector initiatives (as envisaged by BEIS' original Smart Data Function). This body will need to be independent, transparent and representative, involving stakeholders from across different market sectors, as well as government and market sector regulators. Underneath this body, it is likely that different market sectors will require sector-specific governance arrangements to accommodate existing initiatives and the regulatory environment.

The EMA considers that the Future Entity is likely to form a finance sector-specific body within a wider open data ecosystem governance structure. This means that the Future Entity should be designed either to:

- Expand its remit to encompass wider Open Finance initiatives, or
- Adapt and operate in the future according to principles devised by an overarching Open Finance governance body.

Clearly, the Future Entity cannot be designed to accommodate all possible future scenarios. But we welcome the FCA's recent feedback statement on Open Finance (FS21/7) which reflects our views on the flexibility-by-design which will have to be developed for the Future Entity. We also note the FCA's commitment to work with the CMA and HMT to specifically consider the role of the Future Entity, in the wider context of the UK's Open Finance strategy and policy. This is critical to allow the market to move forward with certainty, and the Future Entity to address the wider strategic requirements during the transition process.

- **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?**

Given the relatively early stage of the Open Banking market, the EMA does not believe that the maintenance and development of payments standards should be separated from account information standards. As the market matures, there may be compelling reasons for the Board of the Future Entity to establish separate governance structures for payments and data access but at the moment separation would create a disproportionate burden on TPPs offering services, in particular, for propositions where AIS and PIS services are very much interlinked.

With regards to payment initiation standards, it is critical that the final Roadmap items are completed so as to allow viable payments propositions to emerge. We, therefore, urge the CMA

to instruct the Future Entity to complete any outstanding payment Roadmap items, in particular implementation of OBIE standards, and establish a payments market participant group which will cooperate to drive forward and deliver the improvements that are required for payment initiation functionality alongside the AIS standards.

- **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.

CMA Questions Regarding Monitoring of the CMA Order Remedies

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?**

The EMA agrees with the CMA’s working assumption that the Future Entity should not be responsible for overseeing compliance monitoring of the CMA9 banks. If this were to be the case, it is likely that the Future Entity’s board and governance structure would need to be entirely independent of industry representatives, and ultimately the Entity would lose the impetus to drive forward innovations as its focus would be maintaining compliance.

If, as we suggested above, regulators participate on the Future Entity’s Board this would provide visibility of the ecosystem performance out with the boundaries of the CMA Order and monitoring function.

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?**

We believe that the collection of data on the performance of the ecosystem could continue to be conducted by the Future Entity. However, there needs to be an analysis undertaken to determine which data is useful for CMA monitoring purposes, and which data is needed for the management and evolution of the services provided by the Future Entity, and in particular, the performance of any new initiatives undertaken. If the CMA require further data or analysis of the ecosystem, these can be procured from the Future Entity by the Compliance Monitoring Entity.

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?

We note that the existing Implementation Trustee's monitoring function has established processes and expertise for gathering detailed information on the performance of the OB ecosystem. Appointing a new firm to undertake this role risks re-establishing this process from scratch with the associated costs to implement.

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.

No comments.

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?

The current OBIE Monitoring Function and Implementation Trustee collect a detailed, technical view of the live operational Open Banking environment and this data is more transparent to the ecosystem than is currently the case for regulatory reporting data. As a result, OBIE and the Trustee are in a position to identify and follow-up on live issues affecting the whole ecosystem and their customers. Given the delayed nature of regulatory reporting the EMA believes that the

FCA's existing monitoring arrangements and regulatory reporting data is in no way comparable and would not be an effective substitute for the Trustee's monitoring function.

6. Are there any other issues regarding monitoring and compliance which the CMA should be aware of?

No further comments.

Transitional Arrangements

- **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?**

As discussed in our response to section 1 of the consultation, the EMA considers that neither the proposed transitional arrangements, nor the Future Entity governance model, are sufficiently defined to be able to identify clear measures that the CMA could take to mitigate against the risks to OBIE's live market services during the transition period.

We note UK Finance recommends that one of first activities of the Future Entity will be to conduct a capability review to assess the existing services provided by OBIE. Without a clear understanding of the scope and objectives of that review, and involving all stakeholders, there is a clear risk that OBIE's ongoing services may be impacted by the outcome of the review.

Furthermore, given the post-Brexit changes to the UK SCTA-RTS, in particular the invalidation of eIDAS certificates issued to UK PSPs, results in OBIE being the sole provider of critical infrastructure (certificate management and Directory) to the UK ecosystem. Any changes to the OB Directory are extremely disruptive to the live ecosystem and can often take months of lead time to prevent impact on end consumers and businesses.

We therefore urge the CMA to require a thorough impact assessment of any proposed changes as a result of a services capability review, before decisions are made to revise ongoing services.

Our suggestions below regarding the transition governance model may also mitigate OBIE's operational risks and hence support the entire ecosystem's resilience during the transition process.

- **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?**

As suggested above, the Trustee's monitoring function should remain in place to oversee the handover to the Future Entity governance structure and continue monitoring the ecosystem.

- **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?**

Please see our response to the bullet point below.

- **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?**

The UK Finance proposals imply that the transition process should be complete by the end of 2021/Q1 2022. However, the latest estimates from OBIE indicate (as at March 2021) that several Roadmap items will still require implementation by the CMA9 beyond this point to approximately June 2022. Furthermore, the Implementation Trustee has not yet made recommendations to the CMA regarding the actions required to satisfy the 'Sweeping' functionality described in of the CMA Order (Roadmap item A10), nor wider considerations of implementing OB's Variable Repeat Payments standards (Roadmap item A2(b)(i). Finally, the Roadmap does not yet fully include any items required to update the OB standards in light of the recent proposed changes in the updated SCA-RTS that the FCA are currently consulting on ([CP21/3 - Changes to the SCA-RTS](#)).

All of these outstanding Roadmap items suggest that a straightforward cut-off point when OBIE can fully transition to the Future Entity is going to be difficult to achieve. Postponing the transition to the Future Entity until all Roadmap items are implemented by the CMA9 banks may not meet market requirements, as the timing would be dictated by the slowest participant and market developments could overtake transition plans. Instead, we consider that the transition process will likely need to be phased and in parallel to the completion of the Roadmap items in order to manage the operational risks of maintaining a live ecosystem as well as ensuring all Roadmap items are completed.

For these reasons, we suggest that the Independent Trustee (and Monitoring Function) and the existing OBIE governance remain in place to oversee, and be responsible to the CMA, for the success of the transition process. We acknowledge that this may have implications for the commitment and funding requirement by the CMA9 banks, however, we do not believe this suggestion is out of step with the UK Finance proposals as they anticipate a period of continued funding by the CMA9 banks beyond the current Roadmap timescales.

At the final handover point to the new governance structure, we suggest that the CMA will instruct the Future Entity to coordinate the successful completion (including CMA9 implementation) of specific outstanding Roadmap items under the oversight of the new Monitoring Function/CMA. We recognise that this adds complexity to the Future Entity's funding model if our suggestions for whole market funding from day 1 is adopted. However, we don't consider this complexity to be a reason for not ensuring that the foundations of the Open Banking ecosystem are completed.

- **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?**

Please see our comments above.

- **Are there any other issues regarding transition arrangements which the CMA should be aware of?**

We note that the UK Finance proposals for the transition period do not consider the impact on the several hundred TPPs, and ASPSPs that are in OBIE's pipeline to join the ecosystem. Many of these companies will be investing heavily in developing their proposition, and could be disproportionately affected if their requirements are not considered as part of the transition process. We suggest that the CMA require that maintaining continuity of the ecosystem pipeline forms part of any transition planning.

Likewise, the FCA's proposals to mandate the use of dedicated interfaces (FCA CP21/3) is likely to significantly increase the number of ASPSPs seeking to join the OB ecosystem within the transition time period. This operational challenge will need to be considered in the funding, requirements, and timing of transition.

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