



Remedies Monitoring Team
Competition & Markets Authority
25 Cabot Square
London E14 4QZ

Hetal Popat
Open Banking Director
HSBC UK
1 Centenary Square
Birmingham B1 1HQ

Via email: RemediesMonitoringTeam@cma.gov.uk

29 March 2021

HSBC Response to Open Consultation The Future Oversight of the CMA's Open Banking Remedies

HSBC UK Bank plc ("HSBC") welcomes the opportunity to respond to the CMA's consultation on appropriate arrangements to ensure the effective oversight and governance of the CMA's open banking remedies following the delivery of the implementation requirements of the Retail Banking Market Investigation Order ("the Order").

As a 'CMA9' institution and active TPP in our own right, HSBC has a strong interest in ensuring the proposed arrangements meet a range of objectives:

- Enabling us to meet ongoing customer service needs – open banking is now a core digital service for many of our customers
- Enabling us to meet existing and future new legal and regulatory obligations, including those relating to PSD2 and Confirmation of Payee, and our obligations under the Order
- Supporting our ability to develop innovative new customer propositions, both as ASPSP and as TPP
- Delivering all of the above in a manner that is cost-effective, with an equitable funding distribution across all industry participants who benefit from the services.

HSBC has actively engaged with UK Finance in support of the industry collective proposal upon which the CMA is consulting. HSBC also supports the UK Finance response to this consultation. Accordingly, our direct response primarily relates to future monitoring arrangements for compliance with Part 2 of the CMA's Retail Banking Order.

As a matter of principle, HSBC advocates for a Future Entity that is funded by all industry parties that benefit from its services. Responsibility for funding should be commensurate with value received, and firms should be free to seek alternative provision if appropriate – this will ensure that services are provided in a disciplined manner. It is reasonable for CMA9 institutions to be obligated to fund Future Entity services linked to the discharge of our CMA Order obligations, and we in turn should have the ability and mechanism to encourage cost discipline that has not existed to date. A limited guarantee to fund these services for a fixed period, for example 24 or 36 months, may be appropriate to provide the CMA with confidence at this stage. Wider services beyond those directly connected with the CMA Order should be sustainable within 12 months and should not require any form of guarantee or warranty from CMA9 institutions

Future compliance monitoring arrangements relating to Article 14 – end state

Once the implementation phase of Open Banking under the Agreed Arrangements (as defined in the Order) is complete, HSBC has not identified any need to have in place a specific replacement monitoring function. We propose that Article 14 monitoring, compliance and enforcement activities be consistent with the approach taken by the CMA to monitoring compliance with the rest of the Order (that is, the rest of Part 2, and Parts 3-5 and 7-11). This approach of firm-level compliance monitoring is consistent with that applied to other similar requirements, for example payment scheme rulebook adherence and Confirmation of Payee compliance. The CMA may wish to consider augmenting Part 2 monitoring with requirements to provide proportionate supporting data, for example, using its power under Article 58. We would welcome the opportunity to discuss the CMA's specific objectives and explore mechanisms to meet these.

As noted by the CMA, FCA will continue to supervise PSD2 compliance which aligns closely to our obligations under Article 14. This means that a typical instance of a material breach of the Read/Write Standard will frequently also give rise to a breach of PSD2, and a requirement to notify the FCA of that breach; and remedial actions are likely to be necessary and sufficient necessary to remediate compliance with the Order. In those circumstances, we would expect that the bank in breach would inform the CMA of the breach alongside the FCA, but the CMA could be largely content to accede to the FCA resolution of the issue, rather than needing to take separate enforcement action itself. This is proposed as a practical arrangement rather than a formal derogation of monitoring and enforcement, and reserves the CMA's rights to take enforcement action should it be deemed appropriate.

Future compliance monitoring arrangements relating to Article 14 – interim state, until completion of road map implementation by a firm

Although HSBC considers monitoring, once in its end state, should be carried out directly by the CMA, it would be reasonable for the CMA to maintain a third party monitor to supervise each firm's completion of the implementation phase. This ensures there will be adequate monitoring capacity during the active implementation phase, without bringing the monitoring function in scope of the Future Entity.

We propose, broadly, that this third party monitoring function be carried out by a professional services firm acting as Monitoring Trustee, who will provide monitoring on a part-time basis as needed. In particular, we propose:

- Formal appointment of a Monitoring Trustee upon the termination of the current Implementation Trustee mandate. This should be coincidental with 'Day 0' – the commencement of activity for the Future Entity that succeeds the current OBIE. This thereby ensures a clean transition process for the whole scope of OBIE activity. The Monitoring Trustee may well be a skilled person within a professional services firm.
- At the new Monitoring Trustee's discretion, it may be helpful to recruit existing OBIE Monitoring Team staff members as contractors or employees of the appointed Monitoring Trustee firm. This would preserve knowledge and skills developed to date, ensuring an efficient and effective capability remains in place.
- Monitoring scope should be consistent with activities to date. This includes tracking implementation of new requirements against mandated dates, and tracking firm-specific remediation activity (for example, performance improvement plans and any Directions in force).
- Each firm should exit the monitoring arrangement upon satisfying the Monitoring Trustee that the firm meets the final requirements of the Open Banking standards, with evidential requirements no greater than those currently applied by OBIE. From that

point, firms should self-attest compliance as described above. The Monitoring Trustee mandate should set out an explicit route to exit for individual firms.

- For practical purposes, we envisage the Monitoring Trustee will be funded from the OBIE budget for 2021. For 2022 we propose the CMA9 institutions fund the new Monitoring Trustee separately to the Future Entity, in proportion to PCA market share. If any firms remain within scope of the Monitoring Trustee in 2023 they should fund this activity in proportion to their residual market share.
- The Monitoring Trustee is responsible for ensuring the Monitoring Function is well managed, and its resources will taper as firms exit the monitoring framework. Once all firms exit the framework, the Monitoring Trustee's mandate should be satisfied.

HSBC agrees with the CMA's assumption that it would not be appropriate for the Future Entity to have responsibility for compliance monitoring of the conduct of some of its members. To enable the Future Entity to grow beyond the scope of Open Banking to include Open Finance and other future initiatives it will be important that the governance, membership, and leadership not be constrained in this manner. Therefore, in our view, the Future Entity should not be responsible for any aspect of compliance monitoring of the CMA9, nor should it be involved in the process of data collation and publication on behalf of the CMA.

Wider outcomes monitoring

The CMA raises the question of how ecosystem monitoring should be conducted. This is inherently different to the monitoring of CMA9 banks compliance with specific obligations in the Order, described above. In our experience, ecosystem monitoring concerns functional or non-functional enhancements to the API standards needed to ensure that firms can meet customer needs or to extend their capability to achieve a pro-competitive objective or ensure better customer outcomes. We agree that this will be an important function, and that it is best handled in two layers.

First, we see the Future Entity acting as the day-to-day focus for 'whole of market' discussions around the ecosystem and how it might be enhanced. We believe this function will be best served within the Future Entity based on the advisory committee and participant groups recommended by UK Finance.

Secondly, the CMA and FCA can sit behind this to monitor the direction of these enhancements, with the ability to intervene as necessary if the regulators are ever concerned that the Future Entity is failing to develop in a way that serves the interests of consumers and competition. Through its ongoing monitoring role, the CMA will retain significant expertise in Open Banking. The CMA will thus be well-placed to decide whether and when to carry out a review of the Order, in accordance with its formal Enterprise Act powers, if concerned about the direction of the Future Entity. The FCA will similarly have its ability to carry out market studies and/or consulting on rule-making according to its Enterprise Act and FSMA powers.

Concluding remarks

HSBC considers that the CMA's consultation is timely, and it is important to now provide clarity on the future institutional arrangements linked to Part 2 of the Order. We acknowledge that there are transition risks to be managed, and we expect to play our part in ensuring these are mitigated. However, we consider that the greater risks are in inaction or deferral. The open banking remedy is an enabling process which has already sparked innovation in the retail banking market. The next steps to build on the remedy requires a Future Entity that can consider

outcomes which are wider than those linked to the CMA's Order. In addition, the talent pool that OBIE has nurtured may be at risk if the individuals do not see clear next steps for the entity.

We would be delighted to discuss any points arising in more detail.

Yours sincerely

Hetal Popat
Open Banking Director
HSBC