

Consultation Response: Future oversight of the CMA's Open Banking remedies

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We invite views on the following questions relating to the leadership of the Future Entity:

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?

Icebreaker One response: Given the objectives of the CMA Order to introduce greater competition, more innovation and a level playing field for fintechs and banks, we believe that appointment of the Chair must require approval by the CMA. The candidates for appointment should be approved by the Members, according to a voting system that ensures that the fintech community has at least parity with the banking community.

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?

Icebreaker One response: The proposed composition of the Board appears to provide for independent, balanced decision making.

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?

Icebreaker One response: The Board should have accountability to the body overseeing Smart Data Initiatives, in order to ensure that Open Banking develops in line with Smart Data objectives and the UK's National Data Strategy.

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?

Icebreaker One response: The Board must be able to agree the scope, priorities and activities of the Future Entity independently, and to make decisions that align with Smart Data objectives, such as enabling cross-sector interoperability of services. Therefore, the interests of the CMA9 banks must be secondary to broader national interest as the Smart data economy develops.

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

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?

Icebreaker One response: The proposed framework is considered to be a logical approach that will allow the Future Entity to meet its objectives and obligations as currently envisaged.

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?*

Icebreaker One response: There is already demonstrable evidence that additional revenue can be generated through examples such as Confirmation of Payee. There is also the opportunity to provide services to other sectors such as directory services and support, DMS and consulting services. A proactive approach would result in revenue generation and will provide useful services both to the Open Banking/Open Finance community and very possibly broader Smart Data sector initiatives where projects are likely to go out to tender.

- *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?*

Icebreaker One response: It would be prudent to ensure that the Future Entity can demonstrate stability that delivers to its immediate objectives and obligations. Strategically, to signal to the market that this is a long-term component of the UK's national strategy, we recommend a minimum of five years' baseline (core) funding be secured. This will allow longer lead time external initiatives to mature and allow the Future Entity to plan ahead effectively and with confidence.

- *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?*

Icebreaker One response: The Future Entity should adopt a governance process as commonly used across organisations (decision-making gates) to evaluate competing priorities and ensure that resources and budget are effectively applied.

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?

Icebreaker One response: It is reasonable that TPPs should be required to contribute to the running costs of the Future Entity, as it will be essential to the success of their businesses. However, this should be carefully considered in order to ensure that it is proportionate and does not introduce obstacles to smaller organisations and start-ups. Prioritisation should be focussed on increasing market openness, engagement and participation as this will drive efficiency, innovation and investment to the benefit of the end users.

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?

Icebreaker One response: It will be essential to maintain these services as they are extremely important in providing a well-functioning ecosystem with the lowest possible entry requirements. Therefore, there must be an obligation for these to be provided to a minimum standard.

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?

Icebreaker One response: No material concerns.

We would welcome views on the following issues relating to customer representation:

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

Icebreaker One response: We consider the proposed arrangements to be sufficient, with the proviso that the current consultation approach with Consumer and SME stakeholders continues in a suitable form.

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

Icebreaker One response: We believe that one board member can represent the views of both, provided that they are supported with input from consumer and SME stakeholder communities as outlined in our answer 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?

Icebreaker One response: Candidates should be invited to apply, and may be proposed from the existing consumer and SME Forums. One aspect that must be referenced is the needs of vulnerable consumers, ensuring that a balance is struck between ensuring successful wide market adoption and the benefits that this brings, and the requirements (and protections) for this specific group.

Sustainability / adaptability

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

a) 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?

Icebreaker One response: We consider that CMA9 banks should be required to maintain their support for the Future Entity indefinitely. Given the retail reach of these banks, withdrawal of one or more may jeopardise the single standard adopted across the UK banking/fintech sector which has been a key factor in the success and adoption of Open Banking in the UK. However, the fees that they pay should be proportionate and represent fair value to them.

b) 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?

Icebreaker One response: No, there should not be a “free ride”. It is important that all participants pay a proportionate fee, but the formula for this must be calculated and agreed by the members. Pricing should ensure the maximisation of market participation.

c) 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?

Icebreaker One response: We believe that Smart Data sector initiatives require their own focus and must meet very specific needs, and therefore do not consider the Future Entity to be a suitable vehicle for wider Open Finance beyond bank accounts not covered by PSD2. Experience through the Open Energy project has confirmed to us that detailed, specialist knowledge of a sector is required in order to ensure that user and sector needs are met, and the specific use cases are well understood.

We support the recommendations of the 2019 The Open Finance Working Group on cohesion and interoperability:

1. Ensure the whole systems design is anchored around the customer (e.g. fair value exchange, risk is clearly mitigated, systems are demonstrably usable and empowering to the individual).
2. Ensure openly licensed standards, shared and common processes, principles and practice are made compulsory around cohesion and interoperability across the whole market.
3. Initiate both a multi-stakeholder, federated Working Group which can ‘hive up’ lessons learned from Open Banking into a central framework, governance and funding structure, and also enable each financial sector to drive their own Implementation Entities to address sector-specific issues (e.g. Open Insurance/ Pensions/ Investment).

Therefore, Open Finance should focus on mandating the rules, principles and practices for cohesion and interoperability, in which each finance sub-sector will require separate focus, driven by a clear understanding of the use cases, user and market needs. This leads us to recommend an Implementation Entity and Directory for each new sector, with interoperability being the critical issue where the systems architecture addresses macro-systems design.

However, the Future Entity could provide capabilities to sector initiatives (such as a Directory service, DMS, operational components) where these are offered in a competitive environment. We believe that it is important that there is choice in technology and service providers to support different sector Smart Data initiatives.

d) 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?

Icebreaker One response: This argument bears scrutiny and is being actively considered in other (non-PSD2) markets. We propose that a full evaluation of this option is undertaken in

the light of the evolving needs of the payment sector and any requirements that may emerge from Smart Data initiatives.

e) 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?

Icebreaker One response: The approach must be considered in relation to the findings of the Smart Data Working Group and within the overall context of National Data Strategy. There should be a requirement to work collaboratively with other sector initiatives as they evolve in order to ensure alignment and interoperability.

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

- 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?*

Icebreaker One response: We believe that day-to-day performance and availability issues are best undertaken by the Future Entity. However regulatory compliance monitoring should be undertaken separately. This may use data provided by the Future Entity for this purpose.

- 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?*

Icebreaker One response: This is an essential core role for the Future Entity which must engage closely with its members and the broader stakeholder community to understand development requirements and iterate accordingly. This is a common process undertaken in the product management discipline and ensures that the proposition, feature set and customer journey are continually refined in line with user and market needs.

- 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?*

Icebreaker One response: The approach described is in line with normal independent audit practice. However, the same large professional services firms are also engaged in providing consultancy services to organisations implementing and running Open Banking (and, it is to be expected, Open Finance) services. Therefore any appointment would need to be carefully

constructed and applied in order to avoid conflict of interest. Alternatives, or a fully independent Trustee should be explored.

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.*

Icebreaker One response: With the Future Entity providing the basic reporting to a compliance function, the reports could be screened and any areas to be investigated could be highlighted to the compliance function for consideration.

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?*

Icebreaker One response: Yes, it is important to maintain a monitoring function because aspects such as high abandonment rates in the customer journey may be indicative of deeper issues with the ASPSP implementation and may not necessarily fall within the scope of PSD2.

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

Icebreaker One response: We are not aware of any.

Transitional arrangements – design considerations

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?

Icebreaker One response: Ensure that adequate transitional funding is maintained and key members of the team are retained.

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?

Icebreaker One response: The monitoring function should be relocated to the CMA in the early stages of the transition.

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?

Icebreaker One response: The Trustee should be accountable and retained to manage the transition to the point that the new governance arrangements are in place and functioning.

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?

Icebreaker One response: The compliance team should be tasked with ensuring that the roadmap has been delivered and implemented satisfactorily to meet the requirements of the CMA Order.

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?

Icebreaker One response: Yes, the Future Entity should be able to undertake development work beyond its current scope, subject to normal commercial practices. This will assist the transition to a new operating state.

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

Icebreaker One response: We are not aware of any.
