

Moneyhub Financial Technology Ltd response to CMA consultation on “*The future oversight of the CMA’s open banking remedies*”

CMA’s original aspirations¹ were that the remedies would “enable customers to be more responsive and reduce the advantages of the existing banks. They will also provide stronger incentives on all banks to compete and make the market more attractive to new banks and other providers, as well as facilitating innovation.”

Moneyhub’s advocacy for open finance, financial inclusion and customer-centric services is evidenced in our activities - our CEO, Sam Seaton, is a Non-Executive Director of Charities Aid Foundation (CAF) Bank; a Steering Group member on the Pensions Dashboards Programme and the TISA Open Savings, Investments and Pensions initiative. Our CTO, Dave Tonge, was a founding member of FDATA shaping future open standards and is co-chair of the Financial-Grade API Working Group at the Open ID Foundation. It is also reflected in our clients including charities, such as The Big Exchange and fintechs serving the Third Sector.

Moneyhub’s comments are informed by our experience as a regulated AISP and PISP, and how the CMA can ensure: “future arrangements for the governance of open banking results in a framework that are:

- independently-led and accountable
- adequately resourced to perform the functions required
- dedicated to serving the interests of consumers and SMEs
- sustainable and adaptable to future needs of the ecosystem²”

In summary, while we commend the OBIE, experience has highlighted some areas of focus for the future. We would reiterate the need for effective monitoring and enforcement of non-compliance with the current regulations; the need for independence and transparency in the governance structure; and consideration of

¹ CMA (2016) *Making Banks work harder for you*

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/544942/overview-of-the-banking-retail-market.pdf

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<https://www.gov.uk/government/consultations/future-oversight-of-the-cmas-open-banking-remedies/the-future-oversight-of-the-cmas-open-banking-remedies#fn:9>

intangible barriers to effective participation in the ecosystem where monitoring and enforcement are not credible threats.

Our response to specific questions are summarised below:

Consultation Question	Moneyhub response
Independent and accountable leadership	
<p>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</p> <p>1 Trustee?</p>	<p>Given the influence of the Chair's role, it would be prudent for the CMA to approve the appointment. The question also arises as to the Chair length of tenure, terms of reference and number of terms.</p>
<p>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</p> <p>2 the CMA seek further</p>	<p>As noted above, transparency and trust in the board’s function can be enhanced through the design of tenure, terms of reference, requirement to declare any conflicts of interest (e.g. paid or unpaid advisory, promotional and NED roles). Without these parameters in place there is a risk that the Future Entity would be unduly influenced by larger OB ecosystem stakeholders.</p>

	<p>information or assurances before concluding that the proposals will result in an independently led organisation?</p>
<p>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?</p>	<p>The consultation highlights monitoring and enforcement functions, including "assessing how well the ecosystem is working overall in delivering customer outcomes." However, the focus on customer and SME outcomes needs to be part of the accountability structure for the "Future Entity" in order to achieve the aspirations of CMA's order and those of policymakers such as FCA and BEIS. The transparency and accountability of OBIE must be maintained and enhanced to build trust within the TPP community. For example, consideration of board voting to help to mitigate conflicts of interest. A clear escalation and arbitration process is needed to either the FCA or CMA.</p>
<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</p>	<p>The risk/tension can be mitigated if the Chair/NED and Advisory Committee are sufficiently independent of the CMA-9. However, if the individuals also sit on Boards of CMA-9 institutions of other large incumbents as this may create conflict of interest. It is heartening that some larger institutions are moving beyond seeing Open Banking as a compliance burden to recognise the commercial opportunities of the open ecosystem. The Future Entity governance needs to enable innovation and resist efforts of laggards to frustrate progress.</p>

	consequence? And if CMA cannot be confident what steps should be taken to mitigate this risk?	
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?	The CMA should look to align best practice from the evolution of digital markets and with other regulatory bodies.
	Adequately resourced to perform the functions required	
6	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 key consideration is whether the Future Entity will be adequately resourced to effectively carry out its functions.
8	What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?	As a commercial entity there is a risk the organisation may become conflicted. CMA oversight is required.
9	Given that the anticipated external revenues may or not materialise in 2022 or be maintained after that date, how	It will depend on the significance of the residual requirements, and the nature of the alternatives, such as an industry levy.

	<p>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?</p>	
10	<p>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? [footnote 18]</p>	<p>An impact assessment could be undertaken.</p>
11	<p>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>TPPs are constrained, relative to larger incumbents, by financial and non-financial resources. TPPs have provided a disproportionate amount of input into the creation and ongoing support of the ecosystem to help ASPSPs transition into this model. Our experience indicates this requirement will continue and as such additional charges would prohibit achievement of the main aims of the initiative. Funding or member fees from TSPs could be tiered based on the size/turnover of the third party to reduce "free-ride" of non-CMA-9 participants and noting that some TSPs and other open finance participants such as retailers are very large organisations.</p>
12	<p>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.</p>	<p>If in practice a wider set of functions and services have proven to be fundamental the scope of supply should be widened to reflect these requirements.</p>

	<p>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>Representation of consumers and SMEs</p>	
14	<p>Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?</p>	<p>SMEs can be excluded by financial constraints (see comment on fees above) and non-financial constraints, for example a lack of dedicated resources to participate in consultations, policy and corporate affairs.</p>
15	<p>Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?</p>	<p>Consumers and SMEs have diverse use cases and needs from open banking/finance. Given the primacy of better consumer outcomes in CMA's policy objectives the Future Entity will want to go beyond "adequate" in ensuring consumers and SMEs are comprehensively and distinctly represented. Consideration must be given to effective representation of consumers and SME, beyond consumer panels. Federation for Small Business, Which?, the Financial Innovation Lab, Fair4AllFinance are just some of the bodies who will be well placed to comment further.</p>
16	<p>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?</p>	<p>Specific reference to the needs of vulnerable or less well-off consumers will be needed as the commercial incentives for these groups are challenging. These groups may lack agency and/or financial capability. These groups may be at risk of potential detriment from: financial harms, like predatory pricing; non-financial harms like micro- targeting excluding consumers from services or exacerbating addictive behaviours; and foregone benefits where</p>

		consumers do not participate due to concerns about use of their data. Collaboration with other stakeholders on AI, ethics and innovation is needed including initiatives at the FCA, the Alan Turing Institute and the ICO and the Government’s Centre for Data Ethics and Innovation.
	Sustainability / adaptability	
17	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?	A longer membership requirement would give the Future Entity more security, signal intent and enable the Entity to explore future funding models more fully. Voting and influence must be decoupled from fee structure.
18	Would the membership / proposed funding model allow	A value analysis exercise should be undertaken to establish a proportionate fee. The funding

	<p>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>model has to manage competitive risks between ASPSPs and TPPs.</p> <p>Critical that the governance and funding structure does not give rise to unfair advantages for ASPSPs through their position in the ecosystem. For wider Open Banking ecosystem benefits will only be realised through collaboration.</p>
19	<p>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>There are a range of open data initiatives underway across Government and the regulatory landscape, such as CMA’s Digital Markets Unit. Firms and consumers need a coherent national data strategy with consistency of consent, redress and user experience guidelines as consumer's expectations and confidence are influenced and informed by experiences in other digital contexts. For example, contrast frictionless e-commerce payments journeys with some open banking account transfers flows.</p>
20	<p>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>While there are advantages to separating these activities it is much more cost effective to bring them together and manage via one entity that supports contiguous customer experience. We should evolve current schemes like Faster Payments rather than create new payments schemes that add further complexity.</p>
21	<p>Do UK Finance’s proposals for the Future Entity raise any other</p>	<p>More transparency is required around the board members and sources of income as well as</p>

	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?	decisions and activity undertaken to ensure trust in the system.
	Monitoring	
22	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 key phrase in this question is "appropriate governance". In the absence of appropriate governance, the Future Entity funded primarily by the CMA-9 would face conflicts of interest. Effective monitoring and enforcement of compliance is required for any framework to retain a credible threat for non-compliance without which there is the risk the Future Entity becomes a member-body acting in the interest of a subset of stakeholders.
23	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	A single ombudsman would provide clarity for stakeholders.

	<p>charged with compliance monitoring or conversely, would this role fit better with the successor body to OBIE?</p>	
24	<p>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?</p>	<p>Monitoring Trustee coupled with increased transparency is appropriate.</p>
25	<p>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.</p>	<p>This is a critical requirement, we would like it to be overseen by the FCA and the CMA and implemented by an independent and transparent Future Entity. With the CMA-9 still not consistently compliant with the legislation, fines to enforce non-compliance could mitigate costs for ASPSPs.</p>
26	<p>Is it necessary to continue monitoring activities at all since the FCA is already responsible for ensuring compliance with the (similar) requirements of the</p>	<p>Continued monitoring is essential, as is addressing the shortcomings of current monitoring and enforcement activities. Any grace period has now passed and enforcement needs to be effective and robust. The FCA</p>

	<p>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?</p>	<p>should consider whether it has the capacity and technical expertise to effectively stewards the operation of an ecosystem such as Open Banking. The current FCA NOT005 for reporting providers breaking the PSD2 regulations has not been able to cope with the volume of non-compliance issues under PSD2 regulations. As such we see long lead times before issues are addressed. We see this as an opportunity to increase the powers of the entity to act as an early point of escalation and proportionate fines could provide a revenue stream.</p>
27	<p>Are there any other issues regarding monitoring and compliance which the CMA should be aware of?</p>	<p>The OBIE has had limited success ensuring the compliance of smaller ASPSPs - many of which are still not fully compliant with PSD2 - and the CMA-9. Compliance and monitoring activities need to be robust.</p>
	<p>Transitional arrangements – design considerations</p>	
31	<p>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</p>	<p>The completion of the Roadmap should be a prerequisite to transition and any future reduction in fees placed on the CMA9.</p>

uncompleted?	
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