

Dear Sirs,

Response to the CMA Consultation

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

This submission is made by law firm Morgan, Lewis & Bockius LLP. This submission is non-confidential. It has been prepared following consultation with open banking stakeholders, and does not necessarily represent the views of the firm or our clients. We make this submission because Morgan, Lewis & Bockius LLP is interested in the continued success of open banking where the UK is a leader in the consumer opportunities made possible by open banking.

Our comments are the following:

1. The market recognises the significant work that OBIE has undertaken to date in implementing open banking. However, the feedback we have received suggests that aspects of implementation, including issues relating to technical reliability, have not been completed in full. This appears to be an important factor as part of any consideration regarding the establishment of a replacement entity or materially different skillset overseeing open banking. We spoke with many market participants that are still exploring their open banking journey and are of the view that significant commercialisation opportunities exist e.g. in the context of payments.
2. There is a view that OBIE has made recent important strides in its own development and maturity, necessary to meet the existing implementation challenges and potential next phases in the future of open banking, including for existing participants and potential future participants. To the point expressed in our first paragraph regarding the current status of open banking, opinions also suggested that the existing knowledge and skillsets within OBIE continue to be required but will need to be supplemented in order to fulfil the potential of open banking.
3. Regarding the future of open banking, amongst current and potential participants there is a consistent view that the entity overseeing the next phase of open banking will require greater enforcement powers. There are currently no penalties for failure to comply with a direction issued by OBIE or the CMA9. As a result, entities are only incentivised to deal with issues promptly to the extent there is an impact on their consumer base. For example, an issue caused by an entity's data may only be felt by the consumer when dealing with a TPP. The consumer may therefore associate this error with the TPP, and not the underlying data issued by this other entity. Because the original entity is not incentivised to solve the issue, this leads to prolonged lead times for resolution. If the new overseeing entity had enforcement powers, these could be used to ensure all parties are incentivised to resolve issues affecting the consumer experience.
4. The market acknowledges that it is not necessarily equitable for funding to be reliant on the CMA9, and considers the UK Finance proposal to move from sole funding by the CMA9 to a more collective model to be consistent with the wider purpose of open banking.
5. However, there is a concern in the market that the UK Finance-proposed funding model, with its transition to a reduced contribution by the CMA9 and with the expectation of cost savings and greater contribution from TPPs, is not realistic or sustainable. There is a concern that TPPs will not have sufficient funds to contribute at the same level as other participants, and some may not have the funds to contribute at all. It is not clear whether this means that such TPPs will not be entitled to participate as actively in open banking or have the opportunity for their interests to be heard within.

6. One key aspect for the future of open banking is the generation of additional income streams for the overseeing entity itself as a share of the success and revenues generated by open banking, and the need to find such income streams (e.g. through international commercialisation or payments related systems) will be key to success.
7. Linked to the views on greater enforcement powers is the perspective that a model largely or wholly financed by participants may create tensions and conflicts of interest amongst those participants, which may be a blocker to the success of open banking. A funding and governance structure of any overseeing entity has to have resolution of conflicts of interest and alignment of interests at its heart.
8. It is noted that there is only one consumer representative on the board structure proposed by UK Finance. It is not clear whether this is intended to be an individual or a representative of a group of individuals and how this representative will be chosen. The view of the market is that one representative for consumers does not seem sufficient or balanced.

We would be happy to discuss any of these issues in more detail with you.

Morgan, Lewis & Bockius LLP