

# Future oversight of the CMA's open banking remedies: Consultation and Call for Evidence

**Competition and Markets Authority (CMA)**

**April 2021**

*Response from the Emerging Payments Association*

## Abstract

*This paper sets out the Emerging Payment Association's response to the 'future oversight of the CMA's open banking remedies: Consultation and Call for Evidence', April 2021. It contains recommendations on how to ensure the UK's payments industry continues to be progressive, world-leading and secure by encouraging an open banking environment which benefits all payments stakeholders.*

## Response to Consultation Questions

Our membership base is incredibly broad and representative. As such the EPA has better visibility of the potential tensions and conflicts between different stakeholders than any other association in the industry. These tensions were abundantly clear during our discussions with our members when preparing our response, ranging from the biggest banks to new-entrant TPPs. We value the opportunity to continue to support the difficult industry conversations about the transition period, as these important issues are considered and addressed. And we welcome the opportunity to be involved in practical ways as the future entity transitions. Regarding this consultation, however, we have been unable to provide a united and uniform response to the specific questions contained within it.

Instead, we have set out the overarching view of the EPA's members in our previous published response, which clarifies where we believe the focus of the entity should be, so that it ensures the future of the 'open' ecosystem and allows it to expand and thrive. The CMA consultation does, however, raise other specific questions which we do not address in our original vision document, and some of these practicalities are addressed below.

### Governance & Accountability

As noted in our published overview document, many EPA members felt that the approach being taken was overly prescriptive and bureaucracy-led, rather than exploring what we – whether industry, society, UK Plc, or the CMA itself – wished to see emerge from the transition from Open Banking Implementation Entity to the Future Entity. Some members had concerns that, if the initial composition of the board did not sufficiently address the expected direction to expand the entity's scope into other verticals such as pensions, mortgages, travel and energy, then not only would there be a risk of failing to grasp the new opportunities, but that the existing Open Banking model would atrophy.

As the Entity transitions to its new format, we believe that voting rights will have to adapt as new verticals are brought on board, with incumbents in the new verticals likely to seek degrees of influence similar to those currently expected by CMA9 banks. As far as this relates to the nature of the ideal candidate for Chair, and indeed the wider representation on the Board, this chimes with

our initial recommendation that the Chair and Board should, from the outset, be technologists first and foremost.

Our members also believe that the transition body should help provide independent leadership from the outset, and that this independence will provide the sustainability and adaptability by encouraging new verticals to join the ‘open everything’ community of ecosystems, working together across the common formats and features of the current benign ecosystem within open banking.

During the transition towards a broader church of open services across the new verticals, the accountability of the Entity must broaden to include not only additional sections internally within the CMA, but also additional regulators and sponsoring Government departments. Transparency of operations within the Future Entity will be crucial as the breadth of stakeholders expands exponentially. And the risks of excessive influence from the CMA9 arising from the initial funding model can be mitigated as the Entity expands into additional verticals. In this way, the ‘new incumbents’ (i.e. incumbent players in the new verticals) can not only help to meet the direct funding requirements of the entity but can also share the financial burden of those common elements that exist between the verticals, such as common data standards and APIs.

We also believe that this expansion should help ensure the independence of the governance structure of the broader body, including scope for advisory sub-committees in each vertical.

In overall terms, the initial framework proposed by UK Finance should be capable of performing the functions necessary to ensure the effectiveness of the CMA’s remedies going forward and, as the Entity expands to explore the additional services in wider open finance and beyond, it should allow for the necessary sustainability. The EPA is keen to support UK Finance through this transition phase.

Returning to issues of initial Day One governance and personnel, on balance it was felt that it was more important for the Chair to have a strong background in technology rather than banking. Given expectation for the Future Entity to include other sectors, we believe the Chair would need to be able to represent multiple industry groups. The option to look to the adoption of sub-committees for each vertical was seen as being essential to ensuring that the overall model evolved, not only to show future direction but also to evidence where future funding sources could emerge.

Whilst much of this evolution must happen during the transition period, it was noted that the Day One composition of the Board would need a degree of independence not only from the CMA9 Banks but potentially from banking as a whole.

## Funding & Resources

Our previous response highlighted a number of additional funding sources that could be explored as the Future Entity expands into new verticals, each of which could enable the 'core' offering of value added standards to be maintained on behalf of all verticals. Some of our larger members remained concerned about 'passenger' benefits prevailing but overall it was concluded that, for the ecosystem to be maintained, it was a necessary first step to allow new entrants to be supported in this way and to help them to thrive. As the Future Entity expands its scope it was noted that this burden would be shared with the 'new incumbent' players being introduced to the ecosystem, which would enable the funding to retain the additional functions that OBIE had performed to date.

These additional functions and services, whilst not stipulated in the Order, were universally welcomed by members and the expectation is that the Future Entity should continue to provide such additional benefits as the ecosystem develops. As the remit expands and new stakeholders are added to the Entity's community, the CMA should be confident that these will not only be maintained but extended.

Our members could see the Entity becoming more commercial through the services being offered, and many believed that there should be sufficient commercial interest to see that it remains successful. However, it was also seen to be important that the Future Entity remains 'not-for-profit'. All agreed that this made transparency crucial and this was also raised as an area for further concern, with OBIE operations described by some as a 'bit of a black box' currently.

On these 'passenger' concerns, whilst no hard or firm levels were offered, it was agreed that successful TPPs should contribute, but whether that be by volume of use cases, or scale was uncertain. And when considering the size of these contributions, it should take into account the Entity's success in helping to foster numerous unicorns, some of which now almost rival the smaller CMA9 members by market valuation.

## Consumers

All members believed that the need for consumer/user/participant representation was crucial, and it was also noted that the consumer viewpoint had not received sufficient consideration in assessing what the future of open services should offer. Therefore, whilst the need to have a consumer focus was not challenged, members also remarked that this could be added into the Future Entity's success metrics. Whilst the large numbers of new entrants to the open banking system was seen as a

huge mark of the success of OBIE, it was also noted that the degree to which consumers had taken to adopting the services on offer had not been so dramatic.

Alongside consumer and SME representation on the board, it was also felt that some key performance indicators could be explored to ascertain the level of demand for services offered. These could also reinforce the sustainability of the entity by helping to provide evidence of the value on offer, which could in itself encourage TPPs, or other new providers of services, to increase their own investment in the system.

Adding 'consumer take-up' as a metric of success should help to ensure that the interests of consumers and SMEs are adequately represented and encourage the entire Board to consider this crucial factor, rather than having to rely on a sole Board member or financial metrics alone. Likewise, as these consumer success metrics could be adapted to ensure inclusion, the Board and advisory committee as a whole should be expected to address these factors as a core component of system delivery, rather than as an afterthought.

### Sustainability & Adaptability

As is made clear in our published response, we believe that the adaptability of the Future Entity and its ability to expand to incorporate other verticals is crucial not only to its success, but also to its sustainability. This should be seen as the driving force behind the composition of the Board and voting rights from Day 1, as the future success of the Entity relies upon expansion into other verticals.

As we have noted in our views on Governance structures, we welcome the expansion of Open Banking into Open Finance, Smart Data and beyond, and believe that this is fundamental not only to successful and independent Governance, but also to ensure that the Future Entity has a confident future.

As the new verticals expand to allow the 'new incumbents' into the fold, not only will the Future Entity have the opportunity to provide even more additional services and value, but the attraction of the opportunity to consumers should also be more readily appreciated, driving a virtuous circle of increased consumer adoption, perceived value to businesses, and hence the willingness of businesses both incumbent and new entrants to support and invest in the model.

Finally, while the transition to a new Entity is the focus of this consultation, we believe that there is a need to develop a strategy and clearly defined business plan for payments enabled by open banking. This could become the template for future ‘participant groups’ and give confidence to those in other verticals where the roadmap to standard-enabled open verticals is currently unclear. The EPA and its members are keen to contribute to this process.

## Conclusion

We conclude that the transition phase into a new entity must be handled with care and take into account a broad set of stakeholder interests, but that there should be a rapid assembly of a transition group to take this from its current state into the future entity. We are willing to provide the community’s support for this transition, but as a priority and in the near term, join with others in the industry to develop an exciting strategic plan for ‘open banking payments’, to the benefit of the industry, its users and the UK.

## Thanks

With thanks to the members of the EPA Project Open Banking Team, its Project Mentor, Huw Davies from Ozone API and its Project Lead, Richard Jones from Eversheds Sutherland, as well as the author of this response, Andrew Churchill, EPA Special Advisor.

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## About the Emerging Payments Association

The Emerging Payments Association (EPA), established in 2008, sets out to make payments work for everyone. To achieve this, it runs a comprehensive programme of activities for members with guidance from an independent Advisory Board of 16 payments CEOs.

These activities include a programme of digital and (when possible) face-to-face events including an online annual conference and broadcast awards dinner, numerous briefings and webinars, CEO Round Tables, and networking and training activities. The EPA also runs six stakeholder working groups. More than 100 volunteers collaborate on the important challenges facing our industry

today, such as financial inclusion, recovering from Covid-19, financial crime, regulation, access to banking and promoting the UK globally. The EPA also produces research papers and reports to shed light on the big issues of the day and works closely with industry stakeholders such as the Bank of England, the FCA, HM Treasury, the Payment Systems Regulator, Pay.UK, UK Finance and Innovate Finance.

The EPA has over 130 members that employ over 300,000 staff and process more than £7tn annually. Its members come from across the payments value chain including payments schemes, banks and issuers, merchant acquirers, PSPs, retailers, TPPs and more. These companies have come together to join our community, collaborate, and speak with a unified voice.

The EPA collaborates with its licensees at EPA EU and EPA Asia to create an interconnected global network of people passionate about making payments work for all.

See [www.emergingpayments.org](http://www.emergingpayments.org) for more information. Contact [malik.smith@emergingpayments.org](mailto:malik.smith@emergingpayments.org) for assistance.