



# Plaid's response to the future oversight of the CMA's open banking remedies

## Executive Summary

This document is Plaid's response to the CMA's consultation on the future oversight of the CMA's open banking remedies.

Plaid Financial Ltd. (Plaid) is an authorised payment institution regulated by the Financial Conduct Authority under the Payment Services Regulations 2017 (Firm Registration Number: 804718) for the provision of payment services. Plaid builds technical API infrastructure that connects consumers, financial institutions, and fintech developers - giving consumers greater control over their financial data. By enabling fintechs and developers to build creative PSD2-compliant solutions on top of open banking infrastructure, Plaid is focused on ensuring the success of the goals underpinning open banking and PSD2. Plaid is looking to build on its experience of creating digital financial infrastructure to deliver best in class API experiences and data security for our clients and their consumers.

Founded in 2012, we currently connect 3,000+ apps and services to 11,000+ financial institutions and 4,000+ FinTechs in the UK, Europe, US and Canada. Plaid APIs are being leveraged across an array of fintech verticals from personal finance and lending, to brokerage and consumer payments. As a result of our global footprint, we have experienced open banking initiatives across the UK, Europe and the US, giving us an understanding of the potential barriers and opportunities that arise in different markets. We are working with our clients to leverage open banking while also looking to develop new use cases under open finance.

The Competition and Markets Authority's (CMA) open banking remedies have been a driving force for the development and growing use of open banking in the UK. As regulators, policymakers and industry look to open finance we need to ensure the future oversight is fit for purpose.

The Open Banking Implementation Entity (OBIE) has done a good job over the last five years building and developing open banking in the UK. As we look to a Future Entity (FE) we should build on the work done by OBIE but not replicate it, specifically the development of detailed API standards. Five years ago it became a legal requirement for TPPs to have access to consumers' payment account data, so TPPs



needed access but Account Servicing Payment Service Providers (ASPSPs) didn't know how to give it to them. The CMA's solution was to create the OBIE. What the CMA could not have foreseen, but has become a reality, is the introduction of networks - companies whose sole purpose is to build and provide API based access to banks and Fintechs. This means the original CMA market failure identified in the Retail banking market investigation is no longer there.<sup>1</sup> Consumers, now more than ever have more options available to them focused on making their finances easy to understand and work for them.

The market failure that required the OBIE, as we know it today, to exist was due to ASPSPs lack of technical expertise. That technical expertise deficit has been solved either by the ASPSPs upscaling or, and more commonly seen, through network companies like Plaid. As such the FE doesn't need to solve that market failure for open banking or open finance.

Looking at the open banking ecosystem today there is a new market failure, API performance and availability. ASPSPs still lack the technical expertise to ensure their APIs are performing as required by the market. Network companies have been working hard to overcome these challenges in performance but we ultimately need support from the CMA and FE. Ensuring API performance and availability will be met by a 200 person committee designing APIs.

One of the key functions of the OBIE is the monitoring of ASPSPs APIs. Open banking is only successful if the APIs underpinning access are robust and stable. This is a key responsibility of the OBIE that needs to be transitioned to the FE, to ensure the next stage of open banking is successful the market needs an entity that leverages market data and possesses significant dispute resolution capabilities.

Five years later, we are still seeing some ASPSP APIs failing to meet the performance and availability requirements.<sup>2</sup> Once TPPs can rely on API interfaces provided by ASPSPs, we can start to deliver more open banking products and services. In turn, we believe that this will enable consumers and businesses to build confidence in open banking and to ultimately realise the benefits of open banking and open finance.

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<https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk>

2

<https://standards.openbanking.org.uk/operational-guidelines/availability-and-performance/key-indicators-for-availability-and-performance/latest/>



In summary, our key asks of the CMA as they consider the future oversight of the open banking remedies are;

1. **The market failure isn't access anymore, its performance and availability** - we need to solve this new market failure by moving from an API standards approach to monitoring and enforcement.
2. **More enforcement is needed** - it has been five years since open banking was introduced and yet we are still having difficulties with API performance and availability.
3. **Market monitoring needs to continue** - one of the key functions of the OBIE is the monitoring of APIs, we need this to continue if we want open banking and open finance to be successful.
4. **Introduce five-year terms** - technology is constantly changing, the FE needs to be at the forefront of innovation, introducing a five-year term will ensure this happens.

Below is our response to the consultation. We would be delighted to support the CMA and FE going forward as you consider the future of open banking.

## Annex 1: Consultation Questions

### Independent and accountable leadership

1. *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 (e.g. 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?*

We agree with the CMA and believe that votes being weighted by participant type can and will lead to particular stakeholders and/or stakeholder groups having a higher degree of influence. As such, we would recommend that every participant has an equal vote. Open banking impacts all participants in different ways, their voices and concerns need to be heard and represented equally by the Chair.

The process for determining the Chair needs to be transparent and inclusive of all parties operating within the open banking ecosystem. As the initiator of the open banking remedies, we would recommend the CMA, as the lead on the open banking remedies, leads on the process and works with open banking firms (ASPSPs, TPPs and Trade Associations) to nominate individuals they feel are suitable for the role and meet the criteria. Given the market impact of the Chair position, we would strongly recommend the CMA in collaboration with industry work to identify potential candidates for the Chair. To ensure an unbiased and independent Chair is selected we recommend the CMA make the final decision.

2. *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?*

No, the UKF proposed Board would not be suitably independent to lead the Entity for the following reasons:

- **Future proofing** - The UKF proposal notes that the operating model should evolve to support 'extension to future changes such as Open Finance and Smart Data'. However, we believe the proposed make-up of the Board will cause issues with expanding the role or remit of the entity to other open finance sectors, such as investments, pensions or insurance. Each sector would want to have a representative on the Board which going forward would become unsustainable. Either the Board would become unwieldy (contrary to UKF's desire to keep the Board limited in size), or new sectors will be excluded and feel alienated from the decision making process and will be less likely to engage constructively with the entity.



- **Resource asymmetry** - banks will likely be able to afford to field extremely well qualified and experienced board members. TPPs and consumer groups have fewer resources to call on and to commit. There would be a risk of skewed voting outcomes, e.g. where independent reps or consumer groups do not have the resources or capacity to present arguments that would persuade against those put forward by the banks, leading to bank proposals gaining the most votes.

To ensure the FE Board remains independent we would strongly recommend the CMA review the composition of the Board every two years. Innovation is driving a lot of significant change within the payment sector, new entrants we didn't know about are entering the market every day. Within open banking, new entrants include "networks"<sup>3</sup>, who act as middlemen between banks and smaller fintechs. At the moment there are only a few data aggregators in the UK, however as open banking leads to open finance we see this type of provider growing. As such reviewing the number and type of representatives on the FE Board would be useful as new players join the market.

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?*

Yes, we would strongly suggest that the Board be accountable to the CMA and the membership of the Future Entity. Decisions made by the Board will directly impact TPPs and ASPSPs ability to do business given this impact, we would strongly encourage the CMA to impose the transparency and reporting requirements currently imposed on the OBIE. As open banking moves to open finance we want to ensure all key decisions are made in a transparent, consumer and market-focused way.

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 consequence? And if we cannot be confident what steps should be taken to mitigate this risk?*

Yes, the proposed initial funding model risks the independence of the Entity and appears to be inherently unstable.

The proposal is for ASPSP *members* to fund the entity, however, ASPSP members are entitled to withdraw membership. As UKF note, 'if ASPSP's removed their support in the early years, the entity would not survive financially'. This gives the ASPSP members significant leverage in decision making, because they can ultimately threaten to leave if they are unhappy. UKF's proposal to require the CMA9 to have an initial term of three years does not

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<sup>3</sup> Some examples of "networks" are Plaid, TrueLayer, Tink and SaltEdge



extinguish this problem, because CMA9 members can hold the threat of leaving throughout the initial term (and thus exercise undue influence).

Aside from undermining the Entities independence from bank control, making funding reliant on membership calls into question the future of the Entity. Membership funding may be suitable for a payment scheme, where banks get tangible benefit from funding the scheme (i.e. ability to make interbank payments), but the Open Banking Entity does not deliver such tangible benefits for banks. Indeed, if it functions well, it could lead to some banks losing out to TPPs, or to other banks. A critical mass of banks could withdraw membership if they do not agree with the outcomes being delivered, which would create a funding gap.

We therefore agree that annual funding requirements should be covered by ASPSPs, but rather than tying funding to membership of the Entity, the ongoing funding by the CMA9 should continue to be mandatory (collected in the same way the OBIE is funded, or an alternative method sanctioned by the CMA). This will provide continuity and stability, and avoid the undue influence described above.

It is fair for the CMA9 to recover costs from the assets they are funding the maintenance of. This should be obtained in a way which does not contradict legal requirements (e.g. PSD2), nor frustrate competition. For example, the CMA9 could:

- Charge other ASPSPs (as ASPSPs) for the use of directory services (which benefit ASPSPs who value the security)
- Charge ASPSPs for the development and maintenance of standards for APIs outside of mandatory requirements (that might be commercially beneficial for ASPSPs)

Where Open Finance introduces new mandatory requirements for other financial institutions, these financial institutions could be charged specifically for new assets that need to be developed and maintained for Open Finance.

TPPs should not be charged any fees for the maintenance or development of the Entity. This is because:

- The operation of the Entity will be part of the CMA Order and therefore it will be against the competition aims of that order to charge TPPs
- The operation of the Entity will be part of enabling banks to (efficiently) meet their Payment Services Regulation requirements (PSRs), and it would be contrary to the PSRs to charge TPPs
- OR, the Entity will have developed standards for APIs outside of regulation, which banks can charge TPPs for, and therefore, it would be unfair to charge TPPs to create an asset which TPPs are being charged for down the line. TPPs would be paying twice.

In summary, the CMA9 should continue to fund the Entity (with additional funders brought in through future Open Finance Regulations). Costs could then be recovered by:

- Charging other ASPSPs for services
- Charging TPPs for access to so called 'premium APIs' outside of regulation



The benefit of recovering costs from TPPs in this way is that ASPSPs are incentivised to firstly build the APIs well, and then maintain the APIs in good working order.

We would be supportive of a levy being introduced for TPPs that reflects the additional services received from the future entity (i.e. services which are over above what they are entitled to by law). However this levy would have to be fair and proportionate to TPPs businesses. We would suggest the CMA work with TPPs to understand the exact calculation of this levy if it is the preferred route to fund the future entity.

We feel one method to ensure the Chair can resist pressure from ASPSPs is to make the position tenured, we will provide more detail in our response to question number 5.

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?*

Yes, we are concerned about the ability of the Chair to remain independent if they can remain in situ for an undefined period. The Chair at other regulatory bodies (e.g. the CMA, FCA, and PSR) are appointed for a five-year term. After that time, the Chair can continue in their role or a new Chair can be appointed. Introducing a five-year appointment term would allow the CMA and FE Board the opportunity to review the Chair's independence, ensuring they remain the best candidate for the position.

We are also concerned that the Membership of the FE would only be informed of the strategy proposed by the Chief Executive - see Figure 2 in the consultation. Given the direct impact on TPPs and ASPSPs businesses, we believe that any strategy proposed should include a consultation by Membership participants.

## **Adequately resourced to perform the functions required**

1. *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?*

No, we believe that the FE needs more enforcement power in relation to ensuring ASPSPs API performance. As explained in our Executive Summary, the market has changed from five years ago, the FE needs to move away from being a standards-setting body to a monitoring and enforcement body. While there has been progress made on API availability and performance, more work needs to be done to ensure those bad actors are identified and proportionally reprimanded for failure to meet availability and performance requirements. To ensure the effectiveness of the open banking remedies, we suggest the FE is mandated to report on ASPSPs APIs, the FE should collect data directly from TPPs, TSPs and ASPSPs before providing that information to the CMA. That data should be used by the FCA and CMA when taking enforcement and supervisory actions against ASPSPs.

With these clear enforcement actions available for the FE to leverage, we believe they will be able to ensure the effectiveness of the open banking remedies. We would also suggest the FE publish all the data collected in relation to member ASPSPs APIs<sup>4</sup>, having this transparency will ensure ASPSPs and TPPs are focused on making open banking work.

2. *Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:*
  - a. *What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?*
  - b. *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?*
  - c. *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?*

We are concerned that the FE's costs will not decrease over the years, especially in light of open finance. In the recently published [Kalifa Review of UK FinTech](#), it stated the need for a coalition on open finance, a role the FE could fulfil. We see the FE helping to develop and support open finance by expanding the support desk tickets, protecting TPP access and consume interest. The proposed funding structure would not be fit for purpose and would put a lot of pressure on Member ASPSP funding.

In addition, as noted above, tying funding to membership makes funding inherently unstable and could undermine the independence of the Entity. Funding should continue to come from

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<sup>4</sup> Data should include the following; API response times, API availability, API performance, Number of abandoned journeys, API response times and total time to complete the journey.





the CMA9, with the Entity able to recover cost through charging other ASPSPs for services and use of the Entity's assets.

Before finalising the funding structure, we would suggest the CMA and FE work together to understand the extent of the potential funding required for the FE to lead on the development of open finance. We would strongly recommend the FE consider partnering with trade associations already supporting the TPP and ASPSP communities to raise funding, gather insights and build a better open banking ecosystem. Such trade associations include UK Finance, FDATA and the E-Money Association.

- 3. 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?*

TPPs should not be charged any fees for the maintenance or development of the Entity, because:

- The operation of the Entity will be part of the CMA Order and therefore it will be against the competition aims of that order to charge TPPs
- The operation of the Entity will be part of enabling banks to meet their Payment Services Regulation requirements (PSRs), and it would be contrary to the PSRs to charge TPPs

Cost recovery from TPPs should be through charging TPPs to use 'premium' APIs (where this is permissible under law). This will ensure a sustainable open banking future where ASPSPs create APIs as products, rather than compliance requirements, and ensure their availability and performance on par with other revenue generating products.

While our preferred position is for TPPs to not be charge we would be supportive of a levy being introduced for TPPs that reflects the additional services received from the future entity (i.e. services which are over above what they are entitled to by law). However this levy would have to be fair and proportionate to TPPs businesses. We would suggest the CMA work with TPPs to understand the exact calculation of this levy if it is the preferred route to fund the future entity.

- 4. 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?*

No, unless explicitly obligated, there is no guarantee these functions will continue under the FE. We strongly encourage the CMA to mandate the FE to continue to support these



functions. We rely on these functions to resolve issues we have with ASPSPs, as a means of asking questions to other TPPs, and much more.

- 5. 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?*

No, we do not have any other concerns.



### **Representation of consumers and SMEs**

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

Not applicable.

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

Not applicable.

3. 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?*

Yes - We would strongly encourage the CMA to discuss this with the FCA Consumer Panel. Given the nature of the FCA Consumer Panel, we believe they would be best placed to develop a process and criteria that would help identify the best possible candidate.

### **Sustainability / adaptability**

1. *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?*

We would strongly encourage the CMA9 and other large banks (e.g. Metro, Co-Operative, etc.) to be obliged FE members. The CMA9 accounts for 90% of personal and business accounts<sup>5</sup>, adding in additional large banks would move that figure closer to 100%. The CMA's open banking remedies were focused on increasing competition between ASPSPs to ensure that consumers get the best value products. If the largest banks withdraw from the FE then the CMA's goals would be undermined and the entire open banking ecosystem would risk failing.

2. *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?*

No, the funding model proposed states that all member ASPSPs will need to pay a fee proportionate to their business turnover. While the larger banks would still pay the majority of the cost, it will still likely be lower than it is currently as there would be more ASPSPs and TPPs funding open banking rather than all the funding coming from the CMA9. As discussed in response to *question 3 under Adequately resourced to perform the functions required* we suggest the CMA and FE consider adding a surcharge to ASPSPs who do not meet specific parameters around API performance and availability. This approach should help ensure bad actors are penalised.

3. *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?*

Yes, we strongly support the Entity being designed in such a way that it can accommodate future Open Finance regulatory requirements. We are not less supportive that it becomes an implementation entity for the broader smart data work, as this may extend the scope of the Entity beyond its natural capacity.

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<sup>5</sup> <https://www.openwrks.com/what-is-open-banking/participating-banks>



The UKF proposal notes that the operating model should evolve to support 'extension to future changes such as Open Finance and Smart Data'. However, we believe the proposed make-up of the Board will cause issues with expanding the role or remit of the entity to other open finance sectors, such as investments, pensions or insurance. Each sector would want to have a representative on the Board. Either the Board would become unwieldy (contrary to UKF's desire to keep the Board limited in size), or new sectors will be excluded and feel alienated from the decision making process and will be less likely to engage constructively with the entity.

Industry, consumers and government are all working together to legislate and regulate open finance, all we need now is an implementation entity that can help the industry make open finance a reality. That being said, the FE should not look to develop standards for open finance, that responsibility should be for industry (ASPSPs and TPPs). The FE could help mediate problems between providers (i.e. banks, mortgage brokers, pension providers) and TPPs. The FE would work with TPPs and providers to ensure access to data, compliance with the regulations, and help spur innovation through working groups and information sharing.

Open finance is an all-encompassing term, as such, we would recommend the FE breaks down open finance and focuses on the sectors that most directly relate to banking, such as consumer credit, mortgages and pensions. By focusing on specific sectors, the FE can build on lessons learned from OBIE while pushing forward with the open finance roadmap.

4. *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?*

Payment initiation services (PIS) should be maintained and developed alongside account information service (AIS) standards. Both AIS and PIS are regulated by the FCA under the Payment Services Regulations (PSRs) as such AIS and PIS overlap and complement each other in numerous ways. The OBIE Customer Experience Guidelines<sup>6</sup> show that the two customer journeys complement and build on each other, with both requiring the same consent and authentication checks. Based on the FCA Register of the 205 authorised firms 81 of those are authorised to provide AIS and PIS.<sup>7</sup> By separating AIS and PIS, these firms as well as the wider open banking ecosystem will have to start developing and refining these two services independently of each other. This will affect the ability of these services to complement each other and could negatively impact the development of products and services that rely on AIS and PIS to provide innovative services to consumers.

We are of the view that PIS cannot and should not be defined as a "scheme" like BACS or CHAPS. In simple terms, PIS involves providing execution instructions to a payee's ASPSP to make a payment to another payment account. PIS providers do not hold or move funds

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<sup>6</sup> <https://standards.openbanking.org.uk/customer-experience-guidelines/introduction/section-a/latest/>

<sup>7</sup> <https://register.fca.org.uk/s/search?predefined=AIPISP>



themselves; they only provide the information needed so the relevant ASPSP can execute the requested payment. For PIS to be considered a "scheme", PISPs would need access to the full lifecycle of a payment on the payment rails. To date, that is not possible. By making PIS a payment scheme, we run the risk of imposing additional barriers with no additional benefits.

5. *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?*

No, we do not have any additional concerns.

## Questions for consultation

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?*

Yes, we support this position. While an industry-led body can help set the standard for compliance, it should not be the only entity responsible for ensuring compliance with any rules or regulations. The FE should be responsible for monitoring and performance and where appropriate issuing fines to firms who do not meet these requirements. The CMA and FCA should be responsible for reviewing those results and enforcing wider compliance accordingly. It is worth noting that there is some concern about delays in enforcement action when two regulators are involved. However, we believe that concern can be mitigated if the CMA and FCA work together and make enforcement decisions based on the data provided by the FE.

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?*

We feel this role would suit the FE, on the basis that the FE provides this data and insight to the CMA, FCA and other government entities as required. The FE will have direct relationships with TPPs and ASPSPs who are actively involved in the open banking ecosystem. As such, they will be able to gather and confirm the key product and market developments needed.

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?*

Yes, we feel this would be especially useful to identify and develop recommendations to ensure the transition period will be as smooth as possible. Besides, this exercise could help identify lessons learned that could be invaluable to other "open" data initiatives (i.e. open pensions, Smart Data etc.).

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.*

We would strongly recommend the FE conduct an initial assessment and then pass that information to the CMA to decide whether or not to take any enforcement action.

- 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?*

Yes, the CMA and the FE can provide additional support, identify key trends and provide insights into the event a firm is not complying with the rules and regulations. The CMA and FE can also help identify, mitigate and avoid potential issues within the open banking ecosystem.

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

No, we do not have any additional concerns.



## **Transitional arrangements – design considerations**

1. *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?*

The CMA should keep the OBIE, in its current form, in place until the transition of services is deemed complete by the OBIE Implementation Trustee, FE Chair and the CMA.

2. *b)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?*

Yes, during the transition period performance should continue to be monitored. The OBIE has developed methods to monitor and report on the performance of ASPSPs APIs, this data is then shared online via the OBIE website.<sup>8</sup> The data is collected from TPPs and ASPSPs with the OBIE aggregating and cleaning the data. ASPSPs and TPPs should continue to provide data to both the OBIE and FE during the transition period. It would then be up to the OBIE and FE to work together during the transition period to aggregate and clean the data.

3. *c)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?*

The CMA, Implementation Trustee of the OBIE and the Chair of the Future Entity should work together in managing the transition process.

4. *d)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?*

We believe that any remaining functionality should be delivered before the OBIE, in its current form, is ultimately dissolved. Until the Roadmap has been fully executed, the OBIE has not delivered on its commitment. One example is the development of the Variable Recurring Payment Standards (VRP), which have been on the open banking roadmap since 2018, in 2021 the OBIE consulted on draft standards, however, this functionality is still not implemented. This delay negatively affects the growth of PISP. To avoid the risk that the final elements of implementation would be unreasonably delayed or left uncompleted, and to ensure a smooth transition to the FE, all remaining items should remain with the OBIE until they are delivered.

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<sup>8</sup> <https://www.openbanking.org.uk/providers/account-providers/api-performance/>



5. *e) 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?*

Yes, as an industry, we need to begin thinking about and preparing for open finance. As such, it is key that the FE begins developmental work as soon as reasonably possible. Such developmental work should be prioritised once responsibilities have been formally transitioned to the FE.

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

No, we do not have any additional concerns.