

CMA consultation on the future oversight of the CMA's Open Banking remedies

Response from Oliver Prill, Tide CEO

Leadership

Q 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?

A) The slow uptake of Open Banking in the UK is at least in part due to foot-dragging by the larger institutions. The situation has improved but progress is still slower than it should be. Our view is that the largest banks both see Open Banking as a threat and that there is a lack of financial incentives for them to turn that threat into an opportunity. Approval should be sought for all members from a responsible third party such as the CMA, HM Treasury or the Bank of England.

Qb) 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?

A) It will only be possible to know how independent the Future Entity is once it is up and running. We would suggest that a formal review is undertaken by HM Treasury, with input from any interested party, every two years and a public report provided to the CMA, HM Treasury, the Bank of England and the Treasury Select Committee.

Qc) 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?

A) This would be easier to answer if the aims and objectives of the Future Entity were clearer. Simply administering Open Banking is not, in our view, sufficient. The Future Entity should also seek to promote the growth, evolution and development of Open Banking, fostering innovation and competition.

Qd) 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?

A) The CMA is right to be concerned about this risk. There is an inherent conflict of interest in the model. The financial and other resource needs should be agreed, following a formal request by the Board based on a review by the executive team. This will need to be reviewed by the CMA, HM Treasury and/or the Bank of England, and voted on by the wider membership on a one member - one vote basis, so that the large institutions are not able to starve the Future Entity or hold it to ransom.

Qe) 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?

A) The history of organisations similar to the Future Entity in the recent past is not an especially happy one. Regulatory capture is a phrase that springs to mind. This has slowed innovation, raised prices for consumers and frustrated competition. A stronger role for the CMA, HM Treasury and/or the Bank of England should be included in the governance of the Future Entity with a clear brief to address the three short comings noted above: Lack of innovation, higher prices and reduced competition. Commercial incentives in particular need to be created to encourage and foster innovation and competition. Larger institutions could, for instance be allowed to charge a premium for certain types of information. This would turn Open Banking from a nuisance at best and a threat at worst, into a commercial opportunity.

Resources

Qa) 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?

A) As noted above, under OBIE the large institutions had few if any incentives to encourage Open Banking. For many institutions Open Banking was perceived primarily as a threat or a nuisance. This is still largely the case. A re-imagining of the Open Banking model needs to take place so that the need for remedies is less important. If the commercial incentives were aligned with the interests of the large institutions, remedies would not be required. For example, currently the large institutions are forbidden from charging for access or data. It is possible to imagine types of data or classes of access beyond the current basic levels that might be charged for. That would change the model so that the large, data-rich institutions saw Open Banking as a profit centre rather than a threat.

Qb) 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?

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?

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]

A) Our view, as outlined above, is that the Future Entity's Board should put an annual costed plan to the full membership for approval each year. The plan should be approved by a responsible external body such as the CMA, HM Treasury or the Bank of England. Once approved the large institutions should be required to fund the plan.

Qc) 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?

A) A threshold or set of thresholds based on turnover might be envisaged as a way of levelling the playing field and should be considered.

Qd) 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?

A) We hope that the Future Entity will provide these services as part of a remit to promote the development of Open Banking. Whether that happens will depend on the remit of the Future Entity and whether sufficient resources are made available on a fair basis. Tide firmly hopes that this will be the case.

Qe) 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?

A) See above.

Representation of consumers and SMEs

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

A) As a company that primarily serves SMEs we are particularly concerned that they are adequately represented. As noted above the Future Entity should, in our view, have an obligation to promote and develop Open Banking. Start-ups and SMEs will play an important role in pushing Open Banking forward. The stronger the representation they can have in the governance of the Future Entity, the better.

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

A) Consumer and SME interests are not always aligned and they should be represented by different people, in our view.

Qc) 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?

A) There are groups of people in our society whose special needs are often overlooked partly because they are underrepresented. Careful thought should be given to what role the Future Entity might have in recognising special needs and identifying how Open Banking might be a tool to ensure those needs are met.

Sustainability / adaptability

Qa) 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) Membership of the Future Entity should be obligatory, part of their 'license to operate'. Threats to withdraw and/or reduce or stop funding have the potential for the larger institutions to apply pressure on the Future Entity. This risk needs to be minimised.

Q 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?

A) Yes, some, particularly new or start-up members might be able to "free ride", which is why we recommend staged turnover thresholds so that small players are helped and the larger share of the burden is carried by the strongest.

Qc) 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?

A) In principle, yes, the Future Entity may be well suited to this role, if, however, it is clearly focussed on promoting the uptake and development of these projects. The evidence of the recent past would suggest that unless the incentives are the right ones, co-operation can be patchy, at best.

Qd) 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?

A) Separating out the functions may allow more companies to offer services, driving innovation, lowering prices and increasing competition, so in principle, we would welcome this. However, the Payment Services Regulator has not noticeably succeeded in fostering competition in payment services. In fact, competition appears to have reduced markedly. It may therefore be in everyone’s interest if the Future Entity was responsible for all aspects of Open Banking–related activity.

Qe) 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?

A) As we noted above, the industry’s reaction to Open Banking has been patchy at best. Larger institutions, with some justification may have perceived Open Banking as a threat. Our view is that the incentives and the opportunity to turn Open Banking into a profit centre need to be carefully considered. The larger institutions should be allowed to offer ‘premium’ Open Banking access, for a reasonable price, to others as a way of encouraging the development of Open Banking. It needs to be in the large institutions’ commercial interest to participate willingly.