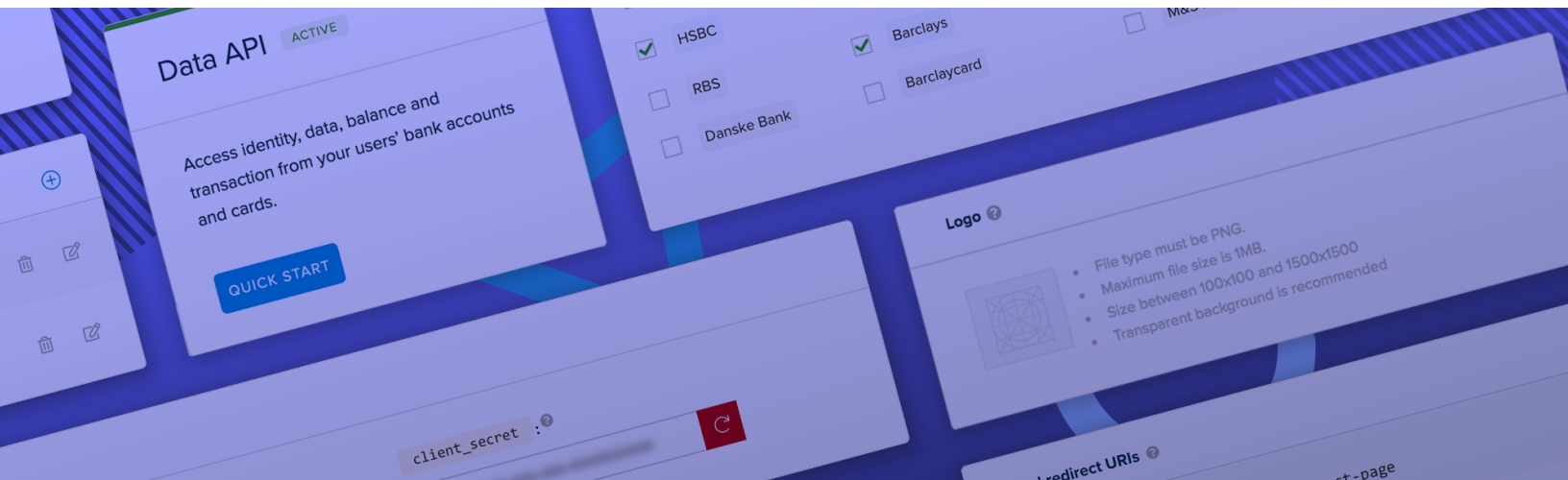


TrueLayer response to the CMA's consultation on the future oversight of the
CMA's open banking remedies



31 March 2021



About TrueLayer

TrueLayer is an UK-FCA authorised account information and payment initiation service provider, established in 2016 to leverage new banking data access rights under PSD2. We also provide API connectivity to many PSD2 regulated open banking companies. TrueLayer clients include fintech firms such as Revolut, savings and investment platform Nutmeg, and the UK Government's Crown Commercial Services. According to data from the CMA9 - our platform routes over half of all UK open banking traffic.

To date, TrueLayer has raised a total of \$72M. Our backers include Anthemis, Connect Ventures, Tencent Holdings and Temasek Holdings. In 2020 we expanded into 12 countries, covering France, Ireland, Italy, Spain, and Germany. Our team has grown by 126% in 2020 (from 80 to 181).

We consider ourselves to be actively promoting the competition objectives of PSD2 and the CMA Order.

Executive summary

TrueLayer is pleased to respond to this consultation. The existence of the CMA Order for Open Banking, and the OBIE, has put the UK at least 12 months ahead of the rest of Europe in terms of open banking implementation and adoption. While we understand that OBIE suffers from governance issues (having been set up as a temporary body) it has had many successes in delivering on the Order and promoting open banking above and beyond the specifics of the original Order (e.g. the customer experience guidelines, standards for refunds, VRP). We look to the CMA to build on the successes of the OBIE as it transitions to a permanent footing.

We agree with the CMA that, 'While the largest banks have shown signs of embracing open banking, they may also have an incentive to slow the further development of the open banking ecosystem, where this conflicts with their own commercial objectives.'

The revenues that ASPSPs make from legacy payment instruments (such as fees from cards – issuance, interchange, interest and acquiring) provide a clear disincentive for ASPSPs to invest adequately in alternatives such as Open Banking.

For this reason we would not propose a company owned and run by ASPSPs to continue the maintenance and development of Open Banking as UK Finance is suggesting.

However, if no alternatives are identified, in order for the Future Entity to further the objectives of the CMA Order, it must:



- Have objectives (Vision and Mission) that are less about reducing costs for ASPSPs and more about enabling TPPs to deliver the competition benefits of an efficient, safe and reliable Open Data and Payments market to UK consumers, small businesses and corporates
- Have a permanent funding source rather than one which is tied to membership and risks being withdrawn periodically (e.g. every two years)
- **Crucially, the CMA must ensure that there is robust, independent oversight for the continuation of open banking activities required under the CMA order. It should do this by maintaining the independent monitoring function that exists today via the OBIE Trustee and monitoring office. We are concerned that if this is carved off from the future Entity, it will not be adequately funded or resourced, with individuals that have expertise regarding what is being monitored. Monitoring should be an independent office within the Entity, funded by ASPSPs, as is the case today with OBIE.**

Future entity Board & Governance

UK Finance proposes that the future Entity Board be made up of Non-exec directors representing two ASPSP, one AIS, one PIS, one consumer representative, and two further NEDs e.g. representatives of SMEs and retailers. The Board would be advised by an Advisory Committee made up of Future Entity board of directors, members, end user representatives, regulators and industry body representatives. Decisions would be consulted on with the advisory committee.

We disagree with this Board structure for the following reasons:

- **Future proofing** - The UK Finance 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 UK Finance'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.
- **Capacity for representation** - It should be acknowledged that a board is not a siloed seat of power, and checks and balances should not stop at board composition. There are committees and advisory groups proposed, all of which a well-resourced ASPSP can attend along with other lobbying activities, which TPPs in a growing market, and consumer/ SME representatives, will not have the capacity to attend. This, along with the proposed Future Entity being accountable only to its members, who will also be ASPSPs, and the conflict of incentive, means



that a company with a seemingly balanced board still carries risk of not hearing or acting appropriately for smaller participants in the ecosystem and making decisions for the good of SMEs and consumers.

- **There is no clarity on how the CEO (who is also proposed to be a Board member) would be appointed**, and there is an indication (as noted by CMA) that the Chair could be appointed in favour of the banks. This would further skew decision making in favour of the banks.
- **Advisory Committee** - there is not enough detail about accountability to the advisory committee, and how the Entity will guarantee the Advisory Committee functions well, and is consulted transparently.

Our recommendations to address these issues are:

- To address concerns around independence of the Board, more consideration needs to be given to creating strong accountability of the Board and the Executive to the CMA and the Monitoring Function (for delivery against mandatory requirements and delivery roadmaps), and to the Advisory Committee for ensuring all open banking/ open finance stakeholders are properly consulted
- At 8+ members, the Board may already be unwieldy. The Board could be simplified to six members consisting of:
 - two TPPs (it should be noted that most TPPs undertake both AIS and PIS, so splitting into individual AIS and PIS representatives would not work).
 - two financial institutions (rather than two ASPSPs)
 - two NEDs - rather than having a standalone consumer representative, the two NEDs could have a duty to consult with a consumer forum, an SME forum and a retailer forum, and to represent views taken from these fora at the Board (we discuss this below).
- The Board will act in an oversight capacity for the executive. However, UK Finance's proposal does not include much detail about the executive. There needs to be a rigorous process for appointing the executive. Further consideration needs to be given for how the executive discharges the Vision and Mission of the entity, and the process for management decision making.
- To address future proofing, the composition of the Board will need to be reviewed once Open Finance rules/ BEIS legislation has been finalised, when new sectors may need to be brought under an implementation entity. Initially, the two ASPSP seats could be renamed 'financial institution' seats so that they will accommodate future members from e.g. investments/ pensions/ sectors, not just banks that are subject to PSD2.
- Regardless of Open Finance developments, there should be a review of the Board every two years to ensure it is properly representing the views of participants and the market.
- Both the Chair and CEO should be appointed in a process overseen by the CMA.



- Regulatory oversight - it is important that whichever governance process is decided upon, regulators such as the CMA and FCA are involved in Board meetings or have oversight of the decision making of the entity. The CMA and FCA should act as independent observers at the table in order to bring more objectivity to key decisions.

We also stress the importance of assembling a diverse and inclusive Board and senior management for the Future Entity.

Future Entity Funding

UK Finance proposes that funding of the Entity will be drawn from banks who are members of the Entity. The bank's membership terms will last two years, after which they can withdraw membership and funding.

We disagree with this funding model. It gives the bank members significant leverage in decision making, because they can ultimately threaten to leave if they are unhappy. UK Finance's proposal to require the CMA9 to have an initial term of three years does not extinguish this problem, because CMA9 members can hold the threat of leaving throughout the initial term (and thus exercise undue influence).

We believe the CMA9 should continue to be required to fund the entity on a permanent basis. This will provide continuity and stability, and avoid undue influence. It may also be appropriate for the new entity to be permanently funded by other ASPSPs, if the entity enables them to meet their regulatory obligations.

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 benefits of using the directory)
- 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 should be required to fund the new assets that need to be developed and maintained for Open Finance.

Recovering costs from TPPs



TPPs should not be required to pay for any element of the entity that is enabling ASPSPs to meet their PSD2 or CMA Order requirements. If elements of the entity are identified which provide clear benefit to TPPs, and which the ASPSPs could choose not to provide, then it may be necessary to consider how the costs are met fairly and proportionately by TPPs. As the Open Finance ecosystem matures and more entities are involved, a long term proportionate funding requirement, such as an Open Finance levy could be considered.

Another way that the CMA9 can recover costs is to use the entity to develop and maintain APIs, the use of which can be charged for - so called 'premium' APIs. The entity could play an important role in agreeing the pricing structure for these APIs, to ensure that costs are proportionate, objective and non-discriminatory. It will be very important to ensure that all TPPs are able to have access to premium APIs on the same terms, i.e. that banks cannot pick and choose which TPPs they do deals with for access to premium APIs.



Question	Response
Future Entity Leadership	
<p>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?</p>	<p>We share the CMA’s concerns about the lack of clarity regarding votes weighted by participant type, and the risk that this could give the largest banks undue influence over the appointment.</p> <p>Given the entity will remain responsible for development and maintenance of API standards that underpin compliance with the CMA order, the CMA should lead recruitment for and appoint the chair (as they did for the Trustee of OBIE). The recruitment could have observers from the FCA and HM Treasury, if the entity will also have a role in underpinning PSD2 compliance or Open Finance development. Open Banking participants should be consulted on the process and selection criteria for the chair.</p> <p>The Chair should have proper independence from both banks/ financial institutions and TPPs, but should have experience with technological innovation.</p>



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 UK Finance proposed Board would not be suitably independent to lead the Entity for the following reasons:

- **Future proofing** - The UK Finance 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 UK Finance'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.
- **Capacity for representation** - It should be acknowledged that a board is not a siloed seat of power, and checks and balances should not stop at board composition. There are committees and advisory groups proposed, all of which a well-resourced ASPSP can attend along with other lobbying activities, which TPPs in a growing market, and consumer/ SME representatives, will not have the capacity to attend. This, along with the proposed Future Entity being accountable only to its members, who will also be ASPSPs, and the conflict of incentive, means that a company with a seemingly balanced board still carries risk of not hearing or acting appropriately for smaller participants in the ecosystem and making decisions for the good of SMEs and consumers.
- **There is no clarity on how the CEO (who is also proposed to be a Board member) would be appointed**, and there is an indication (as noted by CMA) that the Chair could be appointed in favour of the banks. This would further skew decision making in favour of the banks.

Our recommendations to address these issues are:

- To address concerns around independence of the Board, more consideration needs to be given to



	<p>creating strong accountability of the Board and the Executive to the CMA and the Monitoring Function (for delivery against mandatory requirements and delivery roadmaps), and to the Advisory Committee for ensuring all open banking/ open finance stakeholders are properly consulted</p> <ul style="list-style-type: none">● At 8+ members, the Board may already be unwieldy. The Board could be simplified to six members consisting of:<ul style="list-style-type: none">○ two TPPs (it should be noted that most TPPs undertake both AIS and PIS, so splitting into individual AIS and PIS representatives would not work).○ two financial institutions (rather than two ASPSPs)○ two NEDs - rather than having a standalone consumer representative, the two NEDs could have a duty to consult with a consumer forum, an SME forum and a retailer forum, and to represent views taken from these fora at the Board (we discuss this below).● The Board will act in an oversight capacity for the executive. However, UK Finance’s proposal does not include much detail about the executive. There needs to be a rigorous process for appointing the executive. Further consideration needs to be given for how the executive discharges the Vision and Mission of the entity, and the process for management decision making.● To address future proofing, the composition of the Board will need to be reviewed once Open Finance rules/ BEIS legislation has been finalised, when new sectors may need to be brought under an implementation entity. Initially, the two ASPSP seats could be renamed ‘financial institution’ seats so that they will accommodate future members from e.g. investments/ pensions/ sectors, not just banks that are subject to PSD2.● Regardless of Open Finance developments, there should be a review of the Board every two years to
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	<p>ensure it is properly representing the views of participants and the market.</p> <ul style="list-style-type: none">• Both the Chair and CEO should be appointed in a process overseen by the CMA.• Regulatory oversight - it is important that whichever governance process is decided upon, regulators such as the CMA and FCA are involved in Board meetings or have oversight of the decision making of the entity. The CMA and FCA should act as independent observers at the table in order to bring more objectivity to key decisions. <p>We also stress the importance of assembling a diverse and inclusive Board and senior management for the Future Entity.</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>As the Entity will continue to deliver the CMA order the Board should be accountable to the CMA. However, if the entity is chosen as a vehicle to enable financial institutions to comply with further requirements for Open Finance, the accountability may need to be reviewed, for example, including HM Treasury, BEIS or the FCA in oversight of the Entity.</p> <p>Where the entity is delivering mandatory requirements, it should be required to provide transparent reporting and updates, including against a Roadmap (to enable external scrutiny of progress), as is currently the case with OBIE.</p> <p>A governance risk we see stemming from the current UK Finance proposals that, ordinarily, a company is accountable to its members. Given the members of the Future Entity will be ASPSPs, and given the number of them and their resource capabilities, there will need to be very strong safeguards to ensure they do not act in their own commercial interests. No safeguards are forthcoming in the UK Finance proposals.</p> <p>The Entity should also be strongly accountable to the Advisory Committee. There should be robust measures in place to ensure that the Board has properly and transparently consulted the Advisory Committee, when making key decisions.</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 consequence? And if we cannot be confident what steps should be taken to mitigate this risk?</p>	<p>Yes, the proposed initial funding model risks the independence of the Entity and appears to be inherently unstable (as is acknowledged by UK Finance itself).</p> <p>The proposal is for ASPSP <i>members</i> to fund the entity, however, ASPSP members are entitled to withdraw membership. As UK Finance notes, ‘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. UK Finance’s proposal to require the CMA9 to have an initial term of three years does not extinguish this problem, because CMA9 members can hold the threat of leaving throughout the initial term (and thus exercise undue influence).</p> <p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none">● Charge other ASPSPs (as ASPSPs) for the use of directory services (which benefit ASPSPs who value the security)
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	<ul style="list-style-type: none">● Split the annual funding requirement across all ASPSPs and not just CMA9● Charge ASPSPs for the development and maintenance of standards for APIs outside of mandatory requirements (that might be commercially beneficial for ASPSPs) <p>TPPs should not be required to pay for any element of the entity that is enabling ASPSPs to meet their PSD2 or CMA Order requirements. If elements of the entity are identified which provide clear benefit to TPPs, and which the ASPSPs could choose not to provide, then it may be necessary to consider how the costs are met fairly and proportionately by TPPs. As the Open Finance ecosystem matures and more entities are involved, a long term proportionate funding requirement, such as an Open Finance levy could be considered.</p> <p>Another way that the CMA9 can recover costs is to use the entity to develop and maintain APIs, the use of which can be charged for - so called 'premium' APIs. The entity could play an important role in agreeing the pricing structure for these APIs, to ensure that costs are proportionate, objective and non-discriminatory. It will be very important to ensure that all TPPs are able to have access to premium APIs on the same terms, i.e. that banks cannot pick and choose which TPPs they do deals with for access to premium APIs.</p>
<p>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?</p>	<p>We have the following additional concerns:</p> <p>Stated objectives lack reference to competition - The UK Finance proposal explains that the Entity's vision is to <i>enable UK consumers, small businesses and corporates to benefit from a highly efficient, safe and reliable Open Data and Payments market, as well as continuing to provide a platform for UK financial institutions to meet their regulatory requirements.</i> We are concerned that there is no reference to competition in this vision, and that the Entity will not prioritise initiatives that could lead to competition, either between TPPs and banks, or between banks. Indeed the governance issues raised</p>



	<p>throughout this response could have the effect of stifling competition.</p> <p>Stated Objectives lack reference to TPPs - The extent to which UK consumers, small businesses and corporates will be able to benefit from a highly efficient, safe and reliable Open Data and Payments market will be driven by the effect and success of TPPs. It is only through TPPs that benefits can be delivered.</p> <p>Given this, the vision would be better stated as:</p> <p><i>'Enabling TPPs to deliver the competition benefits of a highly efficient, safe and reliable Open Data and Payments market to UK consumers, small businesses and corporates, as well as continuing to provide a platform for UK financial institutions to meet their regulatory requirements.'</i></p> <p>Independence of the Chair - We are concerned about the ability of the Chair to remain independent if they can stay in the role for an undefined period of time. Chair positions at other regulatory bodies (i.e. CMA, FCA and PSR) are appointed for a five-year term. After that time the Chair can continue or a new Chair can be appointed. Introducing a three-year term would allow the CMA and the new Entity the opportunity to review the Chair's independence and ensure they are the best candidate for the role.</p>
<p>Funding model & assumptions</p>	
<p>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?</p>	<p>No. The UK Finance proposal removes some of the aspects of OBIE that made it effective at progressing the CMA's open banking remedies.</p> <p>UK Finance proposes that the entity "would not be predominantly focussed on the compliance requirements of the CMA9". We do not agree that the future entity should be able to shift its focus away from compliance without an effective replacement for the monitoring function (we discuss this below).</p>



	<p>OBIE's capacity to monitor, scrutinise, and follow-up on issues with CMA9 open banking API issues, has been the main reason why the UK is at least 12 months ahead of other EU countries in terms of open banking adoption.</p> <p>The monitoring function should remain as an independent office, within the Entity, in order that it can draw on the resources, MI and expertise of the Entity to aid its monitoring.</p>
<p>7. Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:</p> <ul style="list-style-type: none">• 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]	<p>No. 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 the CMA9, with the Entity able to recover cost through charging other ASPSPs for services and use of the Entity's assets. TPPs should not contribute to the costs of the entity, but the Entity should be free to develop standards for APIs that can be commercialised by the ASPSPs as a means of cost recovery.</p> <p>The funding of the entity should continue to be mandatory for the CMA9 until the CMA9 can demonstrate that cost recovery activities are sufficient to support the Entities core responsibilities.</p> <p>The budget should not be allowed to be reduced, it should be maintained at a level agreed by industry and CMA. Instead of reducing the budget, the costs should be recovered through development of services that the CMA9 can sell to other ASPSPs, and the development of APIs the use of which ASPSPs can charge TPPs for.</p>
<p>8. 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 should not be required to pay for any element of the entity that is enabling ASPSPs to meet their PSD2 or CMA Order requirements. If elements of the entity are identified which provide clear benefit to TPPs, and which the banks could choose not to provide, then it may be necessary to consider how the costs are met fairly by TPPs. As the Open Finance ecosystem matures and more entities are involved, a long term proportionate funding requirement, such as an Open Finance levy may need to be considered.</p>



	<p>Another way that the CMA9 can recover costs is to use the entity to develop and maintain APIs, the use of which can be charged for - so called 'premium' or 'commercial' APIs. The entity could play an important role in agreeing the pricing structure for these APIs, to ensure that costs are proportionate, objective and non-discriminatory and all TPPs are able to have access to APIs on the same terms.</p>
<p>9. 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?</p>	<p>OBIE's capacity to monitor, scrutinise, and follow-up on issues with CMA9 open banking API issues, has been the main reason why the UK is at least 12 months ahead of EU countries in terms of open banking adoption. OBIE has filled a significant gap where little apparent action has been taken by FCA regarding poorly performing bank APIs.</p> <p>More critical than the onboarding service, has been the role OBIE plays via the service desk, and relationship managers, to investigate API issues. However, UK Finance proposes that the entity "would not be predominantly focused on the compliance requirements of the CMA9".</p> <p>The Service Desk provides a necessary service because it enables the chasing of ASPSPs who are slow to respond and provide updates to open issues which affect TPPs. A centrally provided Service Helpdesk is also necessary because individual ASPSPs have a myriad of ways to contact them and they are poor at responding when they are contacted directly.</p> <p>We do not agree that the future entity should be able to shift its focus away from compliance without a replacement for the monitoring function (we discuss this below). The monitoring function should remain as an independent office, within the Entity, in order that it can draw on the resources, MI and expertise of the Entity to aid its monitoring.</p>
<p>10. 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?</p>	<p>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 the CMA9, with the Entity able to recover cost through charging other ASPSPs for services and use of the Entity's assets. TPPs should not contribute to the costs of the entity, but the Entity should be free to develop standards for APIs that can be commercialised by the ASPSPs as a means of cost recovery.</p>



	<p>The funding of the entity should continue to be mandatory for the CMA9 until the CMA9 can demonstrate that cost recovery activities are sufficient to support the Entities core responsibilities.</p> <p>The budget should not be allowed to be reduced, it should be maintained at a level agreed by industry and CMA. Instead of reducing the budget, the costs should be recovered through development of services that the CMA9 can sell to other ASPSPs, and the development of premium APIs the use of which ASPSPs can charge TPPs for.</p>
<p>Representation of consumers and SMEs</p>	
<p>11. Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?</p>	<p>A single consumer representative would not be able to represent the broad range of views and interests of consumers. Similarly if the two other NEDs were tasked with representing all retail and SME views.</p> <p>As noted above, we propose that rather than having a standalone consumer representative on the Board, the two NEDs could have a duty to consult with a consumer forum, an SME forum and a retailer forum that will be maintained by the Entity, and to represent views taken from these fora at the Board.</p> <p>Other bodies, such as Pay.UK operate consumer/SME forums that act as an advisory mechanism for the Board.</p> <p>Observers from the CMA (or other regulators) on the Board may help to ensure fair representation.</p> <p>Full disclosure of Board minutes so that they can be scrutinised externally, may also help to ensure better outcomes.</p>
<p>12. Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?</p>	<p>It will also be crucial to ensure that the Board has the ability to consult with a broad range of consumers/ SMEs/ retailers, or have access to, or the ability to conduct consumer research.</p> <p>As above, we suggest that instead of an individual consumer representative, the two independent NEDs should be responsible for consulting with consumer, SME and retail fora maintained by the Entity. These fora will be separate from the general Advisory Committee, which will</p>



	<p>be populated by members of the Entity (e.g. ASPSPs, and TPPs).</p> <p>If this approach is not acceptable. As a minimum, we would suggest that the consumer representative should be drawn from a consumer organisation, charity, or university, rather than being an individual acting in their own capacity. Likewise for the SME representative.</p>
<p>13. 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>We do not agree that there should be an individual consumer representative on the Board.</p> <p>However, selection criteria for all Board members and the executive should have reference to the needs of vulnerable and less well-off consumers.</p> <p>The consumer representatives in the Consumer forum we propose would also need to be selected with these criteria in mind.</p>
<p>Sustainability / adaptability</p>	
<p>14. 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?</p>	<p>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 the CMA9, with the Entity able to recover cost through charging other ASPSPs for services and use of the Entity’s assets. The Entity should be free to develop standards for APIs that can be commercialised by the ASPSPs as a means of cost recovery.</p> <p>The funding of the entity should continue to be mandatory for the CMA9 until the CMA9 can demonstrate that cost recovery activities are sufficient to support the Entities core responsibilities.</p> <p>The budget should not be allowed to be reduced, it should be maintained at a level agreed by industry and CMA. Instead of reducing the budget, the costs should be recovered through development of services that the CMA9 can sell to other ASPSPs, and the development of premium APIs the use of which ASPSPs can charge TPPs for.</p>



<p>15. 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?</p>	<p>The only way to extend funding of the entity to non-CMA9 ASPSPs would be to extend the Order, or through another legal requirement.</p> <p>Alternatively, as mentioned above, the CMA9 could charge ASPSPs for use of assets such as the directory. They could also develop other value-add services to charge ASPSPs for, until the cost recovery is enough to reduce the CMA9’s contribution. The CMA9 could also use the entity to develop premium API standards, charge non-CMA9 banks for the rights to the standards, and then charge TPPs for calling the premium APIs.</p>
<p>16. 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>Yes, we strongly support the Entity being designed in such a way that it can accommodate future <i>Open Finance</i> regulatory requirements. However, we are not 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.</p> <p>The UK Finance 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 UK Finance’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.</p> <p>The scalability of the Entity needs careful consideration by the CMA and should be reviewed as open finance develops.</p>
<p>17. 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>We strongly disagree that PIS and AIS standards should be dealt with separately. AIS and PIS overlap and complement each other in numerous ways and many TPPs are authorised to do both, and often combine both services (i.e. using data for affordability checks before initiating a payment). Decoupling data from payment initiation would create inefficiencies for TPPs. Both services are regulated</p>



by the FCA and require the same consent and authentication. Separating the maintenance and development of these services will negatively impact how compatible they are going forward which may make the customer journey and experience worse.

We believe 'read' and 'write' access are two sides of the same coin. We are calling for open finance initiatives to focus on both read and write access. If the future Entity is tasked with development of Open Finance Standards, we would want it to focus on both these aspects. We have seen that in Australia where Read and Write access are decoupled, there is significant misalignment and lack of efficiency in the frameworks being built for data vs. payment initiation. For example, data is under the CDR regime, while payment initiation is part of the New Payments Platform. The barriers to entry for firms wishing to carry out payment initiation are very high, as they must be direct participants in the scheme, or obtain sponsorship from a bank.

We strongly disagree that PIS standards should be overseen as a scheme. Payment Schemes govern the execution and settlement of payments between banks. Payment initiation service providers sit above payment schemes, in an 'instructing layer'. - the sole role of a PISP is to place payment orders with banks on behalf of customers.

The messaging uses the same technology (APIs) and the same processes (identification with electronic certificates, exchange of tokens) as data access. There is no justification to treat open data and open payments differently.

To create a scheme to govern PIS would be disproportionate and unnecessary. To subject PISP's to oversight by the Payment Systems Regulator would also be disproportionate and unnecessary as PISPs are already authorised and supervised by the Financial Conduct Authority.



<p>18. 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?</p>	<p>Changes to the existing Directory will be extremely disruptive for TPPs - UK F state that “The service capabilities (in particular the Directory and DMS) need to be reviewed as a part of the transition to confirm whether they are fit for purpose, are compliant with competition law and who should provide them, consulting stakeholders, including regulators" - this indicates that the existing directory could be put to tender by UK Finance. However, there should be very careful consideration about whether to expose the existing directory to competitive tender. This could lead to a lot of disruption for existing TPPs. Any changes to certificate management, for example, require months of lead time to prevent downstream impact on consumers (e.g. loss of consents or downtime).</p>
<p>19. 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?</p>	<p>We strongly support the continuation of a monitoring function.</p> <p>OBIE’s capacity to monitor, scrutinise, and follow-up on issues with CMA9 open banking API issues, has been the main reason why the UK is at least 12 months ahead of EU countries in terms of open banking adoption. OBIE has filled a significant gap where the FCA has decided not to actively supervise the performance of bank APIs.</p> <p>We suggest that data on bank API performance should be obtained from independent sources who are calling the bank APIs. This would give a realistic perspective on the issues that TPPs are facing in terms of outages, processing times, latency etc.</p> <p>Data from such an independent source could be checked against data being provided by the banks, to test whether the banks own monitoring is detecting issues. This data could also be shared with the FCA and CMA in the event they decide to take supervisory action against a bank not meeting the requirements.</p>
<p>20. 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?</p>	<p>We support the continuation of ecosystem monitoring which has been critical to the development of new Roadmap items such as refunds, sweeping and VRP, which are set to ensure the viability of PIS as an ecommerce payment method.</p> <p>Ecosystem monitoring must be independent from the banks (including an industry led Entity that may be effectively run</p>



	<p>by the banks). It should be placed within the independent monitoring office, which will sit within the Entity, but remain independent.</p> <p>A previous industry body - the Payments Council, was criticised, and eventually abolished because it undertook ecosystem monitoring, identified areas for change, but ultimately failed to agree on implementation of that change, due to the influence of banks, who wanted to maintain the status quo, rather than invest. This was ultimately why the Payment Systems Regulator was established - to address failures of strategy in payment systems.</p> <p>Placing responsibility for ecosystem monitoring with an industry led body, risks repeating a similar mistake.</p> <p>The Entity should be responsible for Roadmaps for delivery of change which has been identified by the independent monitoring function, but identification of the Roadmap items should remain independent and cross checked with the CMA.</p>
<p>21. 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>The current monitoring function will have built up a large amount of expertise on previous and ongoing market/ ecosystem issues. Appointing an external firm would risk starting from scratch. Additionally, each time the contract was renewed for the firm, the knowledge base for the monitoring would be lost.</p> <p>There should be a permanent, long term body responsible for monitoring, which can maintain and build on expertise.</p> <p>We believe the monitoring function should sit as an independent office within the new entity, so that it can properly draw upon the resources of the entity. The monitoring function should also be fully funded in the same way as the Entity.</p> <p>While there are currently only two people in the OBIE Monitoring Function today, staff in all areas of OBIE support it with MI, project management support and expertise.</p>
<p>22. ASPSPs may challenge suggestions that they are non-compliant and, currently, the Trustee’s monitoring function makes an initial assessment</p>	<p>The new monitoring function should perform the initial screening. The CMA may not have the bandwidth or</p>



<p>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>expertise to adequately carry out the screening and assessment itself.</p>
<p>23. 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?</p>	<p>We strongly disagree that the FCA's current monitoring activities would be an effective substitute for the activities of the Trustee's monitoring function.</p> <p>OBIE's capacity to monitor, scrutinise, and follow-up on issues with CMA9 open banking API issues, has been the main reason why the UK is at least 12 months ahead EU countries in terms of open banking adoption. OBIE has filled a significant gap where the FCA has not had the capacity or technical knowledge to supervise the performance of bank APIs.</p> <p>The FCA appears to have committed very little resource to supervision of open banking (possibly in line with its risk tolerance approach). Despite numerous failings by CMA9 banks, which have constituted breaches of the Order, as well as breaches of PSD2, no discernable action has been taken by the FCA against any of the CMA9. This has included outages for entire weekends, rate limiting, extremely poor customer journeys, lack of API support teams to deal with issues, months long delays to resolve serious issues.</p> <p>Additionally, the FCA's reporting tools - REP020 and NOT005 are not fit for purpose for capturing the granular, real-time data needed to properly monitor performance and availability of APIs.</p> <p>REP020 is submitted by banks on a quarterly basis (any issues picked up by the FCA in this reporting have long since caused damage to TPPs). The metrics for reporting are also poorly drafted, and enable banks to report 100% availability when in practice, availability has been far lower.</p> <p>NOT005 is a form that TPPs are able to complete and send to the FCA. However, the forms take 30 minutes for a TPP to complete, and therefore, not many are completed by time-constrained TPPs.</p>



	In sum, it would be harmful for UK open banking if the additional assurance provided by the monitoring function were to be replaced by FCA supervision.
Are there any other issues regarding monitoring and compliance which the CMA should be aware of?	See above.
Transitional Arrangements – Design Consideration	
Q(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 existing OBIE should remain fully funded and operational until the current roadmap (i.e. sweeping) has been implemented by the CMA9.
Q(2) 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, the current Trustee’s monitoring function should be maintained. It should be sited within the current OBIE, which should also be maintained until any new entity is developed and established.
Q(3) 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 should ultimately be responsible for signing off on the establishment of the new entity. The banks should be incentivised to establish the Entity by being required to fully fund and maintain the existing OBIE, and its monitoring function, until the new Entity is fully operational.
Q(4) 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?	The existing OBIE should remain fully funded and operational until the current roadmap (i.e. sweeping) has been implemented by the CMA9.
Q(5) 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?	The current OBIE roadmap must be completed and implemented as a priority before attention turns to the Roadmap of the new Entity.



Q(6) Are there any other issues regarding transition arrangements which the CMA should be aware of?

Transition should not be rushed. The OBIE runs and maintain critical infrastructure that ASPSPs and TPPs rely on to comply with legal requirements (e.g. certificate management). Rushing the migration to the new entity could risk technical outages which would be disastrous for UK open banking, including consumers of open banking services.