

Competition and Markets Authority
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CMA: Future oversight of the CMA's open banking remedies

Response from Trustly Group AB

Trustly Group AB ("Trustly") is a Swedish licensed payment institution providing payment initiation services throughout the EU and UK.

Trustly welcomes the opportunity to provide input on the CMA's consultation on the future oversight of the CMA's open banking remedies.

Executive summary

Firstly, Trustly would like to congratulate the OBIE for successfully navigating the very early stages of Open Banking and helping the UK become the world leader in this field. We support the move to create a new body that can build on early success and foster innovation and growth for the Open Banking ecosystem.

However, we believe that the current proposals for the Future Entity, as set out by UK Finance, do not totally support that vision. With respect to governance, we are concerned that the current proposed composition of the Future Entity's Board fails to demonstrate enough independence and flexibility. We believe there is a high risk that the selection process of the Future Entity Chair is subject to undue influence by the larger ecosystem stakeholders (banks), thus giving the CMA9 significant leverage in the Entity's decision making. We recall the way OBIE persevered, against resistance from the CMA9, with improving the user experience. This would not have been possible without an independent mandate and today's Open Banking experience would be much poorer than it is.

The Open Banking ecosystem is diverse and the Board should reflect that diversity. Restricting Board representation to 1 seat per participant type seems short-sighted if the Future Entity wants to be sustainable and adaptable. The CMA should consider expanding the number of non-executive directors (NEDs) to include a wider range of industry participants, e.g. additional independent representatives, consumer/end-user representatives and TPPs.

Although we agree with the current proposals for the initial funding model, we also support bank-led innovations to offer revenue-generating data products (e.g. premium APIs) and the potential for future, alternative funding options that enable TPPs and other parties to participate in a fair and proportionate way.

At this point in time in the ecosystem's development, we see no merit in separating account information services (AIS) and payments initiation services (PIS). The underlying technology delivering these services is the same and many TPPs are authorised and regulated to do both, often combining both services.

The current roadmap and operations of the OBIE should be prioritised and not disrupted by the proposed establishment of the Future Entity. It is essential that the remaining deliverables in the OBIE roadmap are completed. To help mitigate the risk that the transition process might be shaped and managed by banks, there should be TPP and end user representation on the 'transition group' being established to manage the move to the Future Entity.

Independent and accountable leadership	
<p>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?</p>	<p>We are concerned that the current composition of the Future Entity's Board proposed by UK Finance fails to demonstrate enough independence and flexibility.</p> <p>We also believe that UK Finance, as a representative of the banks, should not be the sole body consulted on the Chair's selection process.</p> <p>We believe there is a high risk that the selection process of the Future Entity Chair is subject to undue influence by the larger ecosystem stakeholders (banks), and fully agree that the process should be further clarified and developed.</p> <p>Any Future Entity should have a fully independent chair, with a sound knowledge of Open Data initiatives but with no loyalty to any one sector. The chair should be appointed for a fixed term(s) and the selection process should be agreed in a fully transparent manner. Given that the</p>

	<p>entity will remain responsible for implementing the CMA Order, the CMA should lead the selection and appointment of the first Chairperson.</p>
<p>b) 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?</p>	<p>We agree that at face value the initial proposals for the composition of the Board appear to allow for a balanced perspective.</p> <p>However there are few details on Board voting rights and, to ensure equitable decision making powers, we would suggest that further details are defined on the anticipated procedures for nominating, voting, and selecting industry representatives for the bank and TPP representative independent directors.</p> <p>The Open Banking ecosystem is diverse and the Board should reflect that diversity. Restricting Board representation to 1 seat per participant type seems restrictive if the Future Entity wants to be sustainable and adaptable. The CMA should consider expanding the number of NEDs to include a wider range of industry participants, e.g. additional independent representatives, consumer/end-user representatives and TPPs.</p>
<p>c) 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>The board should be accountable beyond the membership of the Future Entity, and it would be appropriate to impose transparency or reporting requirements on the Entity's Board similar to those imposed on the OBIE.</p>
<p>d) Does the initial funding model envisaged risk undermining the Future Entity's ability to act independently because of the potential tension between the</p>	<p>We believe that the current proposals for the initial funding model, selection of the Chair and Board members gives rise to the risk that the CMA9 banks will have</p>

<p>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>undue influence on the design and independence of the Future Entity, and thereafter have significant leverage in the Entity's decision making.</p> <p>Future, alternative options should be explored that provide a fair and proportionate funding model that allows TPPs to participate.</p>
<p>e) 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>No further comments.</p>
<p>Adequately resourced to perform the functions required</p>	
<p>a) 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>The proposed framework is weighted favourably towards banks and, whilst it will likely ensure continuity of services and infrastructure required to support the existing ecosystem, it may not provide the springboard for open banking to flourish through innovation and strong competition.</p>
<p>b) 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 	<p>No comment.</p>

<p>that the budget of the Future Entity will be adequate to deliver the residual requirements of the Order?</p> <ul style="list-style-type: none"> • 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>c) 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>The Open Baking ecosystem is still quite nascent and many TPPs are not yet operating profitably. In the short term the proposed funding model will continue to support the activities of the Future Entity.</p> <p>However it should be expected that TPPs pay for services that are not mandated under the CMA9 order and PSD2, e.g. premium APIs. This will help foster innovation and mitigate to some extent the funding contribution of the CMA9.</p> <p>Nonetheless, as the ecosystem develops, future, alternative options should be explored that provide a fair and proportionate funding model that allows TPPs and other entities to participate.</p>
<p>d) 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>In the absence of a formal mandate from the CMA, the ecosystem cannot be certain that the Future Entity will continue all of the services in the long term which support the operation of the ecosystem as a whole.</p>

<p>e) 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>No further comments.</p>
<p>Representation of consumers and SMEs</p>	
<p>a) Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?</p>	<p>No, it is unlikely that a single non-exec director can reflect the diverse needs, interests and opinions of both consumers and SMEs. An additional Board representative would enable representation for each of these user groups.</p>
<p>b) Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?</p>	<p>No, it is unlikely that a single non-exec director can reflect the diverse needs, interests and opinions of both consumers and SMEs. An additional Board representative would enable representation for each of these user groups.</p>
<p>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?</p>	<p>No comment.</p>
<p>Sustainability / adaptability</p>	
<p>a) 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)</p>	<p>The commitment from the CMA9 to deliver standardised high quality, stable offerings to ecosystem participants is one of the main reasons that the UK is the world’s leading open banking market. This attracts innovation and investment,</p> <p>If one or more of the CMA9 banks withdrew from the Future Entity, there is the risk that it could jeopardise the stability of the ecosystem on which TPPs rely to</p>

<p>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>deliver services to end-users. This could undermine the progress the UK has achieved so far and could lead the ecosystem to stagnate.</p> <p>A longer membership commitment from the CMA9 would provide greater security for the Future Entity and would help mitigate the risk of a potential crisis in the near term. Over time, it could be expected that the CMA9 and the Future Entity would be able to offset costs by offering revenue-generating commercial products (e.g. premium APIs, data services). Furthermore there is the potential for direct funding contribution by TPPs and other ecosystem participants in the future.</p>
<p>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?</p>	<p>No comment</p>
<p>c) 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>Whilst the Future Entity might be used as a benchmark or blueprint for how other, similar entities might operate in the future, it does not make sense at this point in time to try to futureproof the Future Entity. Other sectors will require different governance requirements.</p> <p>However, it does make sense to ensure that the Future Entity can operate flexibly (e.g. can expand its remit to encompass wider Open Finance initiatives) and can operate underneath an overarching strategic governance body that will oversee and coordinate cross-sector initiatives in Open Finance.</p>

<p>d) 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>At this point in time in the ecosystem's development, we see no merit in separating account information services (AIS) and payments initiation services (PIS). The underlying technology delivering these services is the same and many TPPs are authorised and regulated to do both, often combining both services.</p> <p>Separating the maintenance and development of these services will negatively impact how compatible they are going forward, which will have a negative impact on the customer journey and experience. This will also create a disproportionate regulatory framework, generating additional burden on TPPs, particularly for propositions where AIS and PIS are intrinsically linked. The net effect is to stifle innovation.</p>
<p>e) 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>No further comments.</p>

CMA Questions - monitoring and transition arrangements

<p>Monitoring Arrangements</p>	
<p>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</p>	<p>Monitoring and compliance are key activities that have helped evolve Open Banking in the UK by calling out banks that have not met their obligations.</p> <p>The proposed framework is weighted favourably towards banks so retaining the responsibility for overseeing compliance monitoring within the Future Entity may lead to a</p>

<p>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>compliance driven approach rather than one based on innovation.</p>
<p>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?</p>	<p>The Future Entity is best placed to provide the data for both compliance monitoring (which would be passed on to the entity responsible for compliance monitoring) and ecosystem monitoring that it would use for product development.</p>
<p>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?</p>	<p>Appointing an independent Monitoring Trustee is appropriate. We are not aware of any reason to not consider the incumbent organisation performing this role currently on the OBIE.</p>
<p>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.</p>	<p>We can see no reason not to replicate the existing process (the Trustee's monitoring function makes an initial assessment), so long as escalation procedures are transparent.</p>
<p>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</p>	<p>The current OBIE Monitoring Function and Implementation Trustee collect a detailed, technical view of the live operational Open Banking environment and this data is more transparent to the ecosystem than is currently the case for regulatory</p>

<p>monitoring activities be an effective substitute for the activities of the Trustee's monitoring function?</p>	<p>reporting data. As a result, OBIE and the Trustee are in a position to identify and follow-up on live issues affecting the whole ecosystem and their customers. Given the delayed nature of regulatory reporting, we believe that the FCA's existing monitoring arrangements would not be an effective substitute for the Trustee's monitoring function.</p>
<p>6) Are there any other issues regarding monitoring and compliance which the CMA should be aware of?</p>	<p>No further comments.</p>
<p>Transitional arrangements – design considerations</p>	
<p>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?</p>	<p>We believe that the current roadmap and operations of the OBIE should be prioritised and these should not be disrupted by the proposed establishment of the Future Entity. It is essential that the remaining deliverables in the OBIE roadmap are completed (e.g. variable recurring payments).</p> <p>To help mitigate the risk that the transition process might be shaped and managed by banking stakeholders, there should be TPP and end user representation on the 'transition group' being established to manage the move to the Future Entity.</p>
<p>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?</p>	<p>We believe that providing continuity, through the retention of the incumbent monitoring function, will ensure a more effective transition to the Future Entity.</p>
<p>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?</p>	<p>No comment.</p>

<p>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?</p>	<p>No comment.</p>
<p>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?</p>	<p>No comment.</p>
<p>6) Are there any other issues regarding transition arrangements which the CMA should be aware of?</p>	<p>No comment.</p>

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