

Summary

Yapily is very supportive of a review of the functioning of the OBIE and the new objectives set for the Future Entity. We are encouraged by the fact that the CMA is consulting on the matter and has used the UK Finance's report as a starting point.

With that in mind, our response is written in such a way as to provide a new angle to the CMA's decision and illustrate the impact that its proposals may have on the TPP industry and the Open Banking ecosystem as a whole. As such, we are confident that the CMA will carefully weigh all the views that it will receive as a response to its consultation (UK Finance and wider industry) and will be well-informed to arrive at good decisions for the ecosystem.

The key messages that we consider are important to us and to the industry are below:

- **Governance:** Overall, the spirit of the recommendations is reasonable and the CMA seems to go to great lengths to ensure the independence of the Future Entity. We note, however, that we are concerned by the proposals made by UK Finance around their ability to nominate the Chair for the new entity which may compromise its independence. We are also encouraged by the accent placed on taking into account consumer views and the proposal to include a consumer representative in the decision making process. We are also concerned by the prospect of voting rights being weighted by participant type. This will inadvertently compromise the independence of the decision making process.
- **Monitoring:** We are keen to see stronger surveillance of the ecosystem and a more systematic approach by both banks and TPPs in meeting Open Banking requirements. We are encouraged by the fact that the CMA recognises the importance of surveillance in its consultation and would strongly support a clearer mechanism for ensuring compliance. This is an area that has not always worked effectively in the past despite the wealth of knowledge, information and expertise accumulated by the OBIE. For example, while API success rate is 99.19% according to the OBIE, all other issues and friction are leading to an effective full conversion (i.e. a user starting and completing a payment) of 64.5%. A failure rate for end-to-end payment of 35.5% compared to 7% for debit cards payment is testament that there is still a lot of work that needs to be done to make Open Banking successful.
- **Funding:** The consultation discusses the possibility to ask TPPs to pay for part of the funding of the Future Entity. In light of the Open Finance upcoming developments, the fragility and infancy of the ecosystem, we consider that it is too soon for these discussions to take place. Banks should continue to pay for the funding of the Future Entity as the whole purpose of the Entity was to oversee a

remedy imposed on them by the CMA. We remain open to the idea that in the longer run this model may evolve and would involve a proportionate contribution but at present we consider that it is too soon to make such changes. Regardless of the form of the Future Entity, we consider that it is important that funding and governance are decoupled.

- **Timing:** we consider that it is too soon to be making significant changes to the functioning of the ecosystem. With Open Finance in sight and some Open Banking matters still awaiting to be resolved (user journeys, Variable Recurring Payments, API availability, confirmation of payee and other), we consider that the CMA should take some time - at least 18 to 24 months - before implementing structural changes to the structure of the ecosystem. During this period, the OBIE should remain in place and support the migration to a Future Entity.

Leadership of the Future Entity

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 have significant concerns with the UK Finance proposals of appointing a Chair with "votes weighted by participant type". This will inadvertently tilt the scales towards a Chair that offers preferential treatment to the parties that have voted for him, which in this instance would be the bigger banks. We do consider that Members of the Future entity should have a say in the appointment of the Chair but all votes should be voted equally and more importantly, the FCA and CMA should be consulted on this decision.

From our point of view, the independence and integrity of the Chair are paramount to the successful governance of the Future Entity. We would expect that the Chair has deep knowledge of the industry, and innovation more widely, but without having any conflicts of interest with any of the participants. A chair with a regulatory background and a keen awareness of competition topics would seem a suitable candidate. The Chair should be selected by the CMA in discussion with FCA and PSR. This is to avoid having industry participants influencing the decision and ensuring impartiality. CMA Approval should be sought at this stage. FCA and PSR should be kept informed. The Chair of the OBIE should provide input and advice on the decision process.

In principle, we support the proposed governance structure and we think it is an improvement over the previous model with more controls and transparency built in. However, we are not convinced by the principle that members should hold voting rights weighted per participant type. We consider that all members should have equal voting powers as it would otherwise disadvantage some participants with different incentives.

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?

The proposed Board composition is still potentially open to being influenced by (big or paying) participants given that not all directors are envisaged to be independent.

However, we do not think that it would be a valuable use of the CMA's time to seek further consultation on the Board composition insofar as sufficient controls are built into the governance model to ensure independence and impartiality. Assurance against conflicts of interest for all Board members should of course remain a priority. In addition, the CMA should seek to make an independent decision on the Chair of the Future Entity, taking into consideration the votes of all members and senior management of the OBIE.

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?

To the CMA and the FCA. More importantly, Board minutes and decisions should be made publicly available. Similar reporting requirements as those imposed on the OBIE are absolutely necessary. Members should also have visibility of the business/annual plan of the Future Entity and more scrutiny should be placed on the way that the budget is allocated and managed.

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?

We think that the proposed Board structure will have sufficient power to resist pressures that may arise insofar as all members are given equal voting rights regardless of whether they are paying for the funding of the entity or not. It is true that in the past the funding structure had an effect on the direction that the OBIE has taken but we strongly consider that if all members are given equal voting rights and both CMA and FCA have sight of key decisions then the Future Entity should be able to act independently.

Adequately resourced to perform the functions required

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?

- We agree with the overarching principles of the CMA's proposals on the structure and purpose of the Future Entity: independently-led and accountable, adequately resourced to perform the functions required, dedicated to serving the interests of consumers and SMEs and sustainable and adaptable to future needs of the ecosystem
- We also agree with the vision and mission of the Future Entity (hold and maintain technical standards, provide the core services required, enable regulatory compliance for the industry, be an effective escalation and resolution mechanism etc). Two comments on this point:
 - We would welcome more clarity on how the **escalation and resolution mechanism** will work. In our experience, existing surveillance methods have not always been an effective escalation mechanism so we are keen to understand what additional powers of enforcement tools the Future Entity will have available to provide comfort to its participants that OB standards are met. Related to this point, we continue to consider that there needs to be a move away from the standard reporting that is based on metrics and give the Future Entity more powers to support compliance with regulations.
 - We are particularly supportive of the social angle of the Future Entity's objective (ie those in vulnerable situations are able to experience equal benefits of Open Data and Payments proposition). Our own research has shown the importance of OB in supporting financial inclusion and we are keen to see a more joined up approach from the industry.
- We agree with the proposed service capabilities that the Future Entity should provide. We disagree with the idea that the Dispute Management Service should be removed due to the low level of customer concerns. Instead it should be maintained and given more tools to handle complaints and disputes. We also disagree with the view that low customer concerns are a justification for the removal of the Dispute Management Service. Consumer engagement has been low, in our view, because a) the mechanism in itself has not been sufficiently effective for customers to continue using it and b) because of the lack of awareness that such a mechanism was in place.
- We propose that the Dispute Management Service is maintained and that certain elements under the Standards services that will be provided are reviewed. This should include:
 - SLAs
 - Complaint handling
 - Richer data messages to enable refunds

- Operational consistency
- We agree with the proposal around the entity's structure: A core entity with separate monitoring – this entity would both provide and procure services on behalf of the ecosystem. However, we want to highlight the need to allow for the market to continue to influence the policy of that entity (Model 1). In other words, we consider that Model 1 should allow enough space for elements of Model 3 to feature in (A market led model – whereby the role of the entity is to bring about market forces both through outsourcing the majority of market functions and by leaving the strategic capabilities such as policy reviews and the strategic outcomes for the market to wider associations).

Does the proposed funding model give enough confidence about the resourcing of the Future Entity?

We would agree with a proportionate and fair funding model whereby **all** ASPSPs pay for the operations of the entity and liabilities (separate liability model for each sector requirement or participant group and members only liable to £1). This would mean that the funding cost is split over a larger number of entities - instead of 9 as it currently is - and therefore the cost per entity would decrease considerably. We don't think that there is any reason why ASPSPs would not be in a position to fund the operations of the Future Entity as they are large corporations with plenty of resources. We note the discussion around potentially asking TPPs to pay for part of the funding of the Future Entity depending on their size. We would draw caution on this approach as it may lead to adverse effects and could hinder competition or promote a move to legacy methods such as screen scraping.

We don't have any concerns regarding the sufficiency of the resourcing of the Future Entity insofar as its budget is properly planned and all ASPSPs are required to contribute.

What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?

We can see some ways in which the Future Entity could generate external revenue but we are not convinced that these will materialise or should be considered in the short run. The first one would be through the commercialisation of premium API services. This could be either through a licencing framework for the provision of premium APIs or through centralisation of additional consumer and business data that could be held by the OBIE and subsequently commercialised. Premium APIs seem to us to be the most viable option that would also sufficiently incentivise banks to participate in Open Banking meaningfully. Having said that, we continue to believe that the purpose of the Future Entity should not be on generating revenue but rather on supporting and enforcing performance availability, setting technical standards and optimising consumer journeys.

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?

Even though we do not consider that a regulatory entity should have any revenue targets beyond meeting their cost of operation we can see two possible ways for generating revenue to cover these costs:

1. The CMA or another central government body (such as HMT or HMRC) could guarantee to supplement the Future Entity's funding itself if there is a shortfall. This is effectively the approach taken for utility regulators. Ultimately all consumers (and taxpayers) benefit from the well functioning of a financial ecosystem so we don't think this would be a disproportionate approach.
2. A stricter enforcement of Open banking rules could mean that some entities are fined for breaching Open banking technical standards. The FCA and CMA, as the responsible enforcement bodies and independent entities could set those fines where necessary. This approach is already adopted by regulators such as the FCA and the PSR and is also known as the '[Financial Penalty Scheme](#)'. These fines could be used to support the OBIE's funding requirements. To ensure that incentives are not misaligned, regulators usually use financial penalties to only cover their enforcement costs which for the Future Entity this would mean using financial penalties to cover the costs of surveillance and monitoring.
3. We acknowledge that there is also the option of setting a levy on all participants (managed by the FCA) but we consider that this would take a great deal of co-ordination and it would be challenging to define a metric upon which the level of that levy will be estimated.

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?

There needs to be a prioritisation framework that is agreed with industry from the onset of the Future Entity. This framework should be linked to the high level mission of the Future Entity and the CMA's objectives. The CMA could consult on this and any deviation from the agreed workplan should be considered at its own merits and the participants who would be most affected should agree on whether they would want to fund the project.

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?

Yes it is very reasonable to avoid adding costs on TPPs when the intention of the CMA9 order was to remedy a problem caused by ASPSPs. Without seeing how any funding requirements may vary by TPP size we cannot comment on the appropriateness of the suggestion around TPPs being asked to contribute towards the Future Entity's funding in the future. In general, we believe that the ecosystem is still fragile and in its infancy so any changes on the costs of operation can have unpredictable and unintended effects on the industry. Any changes to the funding framework should be considered after Open finance has also come into effect.

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?

We do not see a reason why these could not be maintained. If the CMA is concerned that these services are adding considerably to the cost of running the entity then these should be budgeted for in the annual funding requirement for the entity.

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?

Yes, the proposed funding structure raises several concerns for the wider ecosystem. To summarise our views:

- We do not consider that TPPs should be asked to pay for a remedy that was imposed on ASPSPs. This is especially true given the early stages of this industry and the existing frictions that still have not been eliminated by ASPSPs in an Open Banking journey.
- It is very premature to initiate discussions on funding models that revolve around additional or premium services. There is a considerable change in the horizon - Open Finance - and given the uncertainty of the services that may be provided by potentially the same TPPs, adding more regulatory costs to their operations is likely to slow down innovation.
- There are other alternatives to supplementing the revenue received by the CMA9 if the CMA is concerned that it cannot sufficiently fund the operations of the Future Entity including requiring central government (HMT or HMRC) to bear some of the cost as ultimately all taxpayers would benefit from competition and innovation in financial markets.

Representation of consumers and SMEs

The mission statement of the proposed Future Entity focuses on the consumer interest and the proposed arrangements include a consumer representative on its Board and an Advisory Committee with consumer representation intended to inform the Board's decisions. Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?

Yes we agree that having a consumer representative on the Advisory Committee will add value to the discussions insofar as the chosen consumer representative body can bring an objective view to the table. However, if SME interests are also to be represented then it would be more appropriate to have both a consumer representative and an SME representative on the Advisory Committee.

Another alternative would be to use a more consultative approach of engagement with multiple consumer and SME representatives via roundtables and workshops.

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

Potentially but there certainly needs to be an advisory committee to provide a holistic view of matters that affect the consumers.

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?

In terms of process and criteria, we consider that whoever is chosen to represent consumer interests should have expertise on broader consumer segments - that may include vulnerable consumers or the digitally excluded. Given the FCA's consumer protection remit, we consider that the regulator would be best placed to nominate the appropriate candidates.

With regards to the second question, Open Banking has a significant role to play in advancing socio economic inclusion so more vulnerable segments of the society should have representation in the committee.

Sustainability / adaptability

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 **strongly support** a compulsory membership and funding requirements being imposed on all ASPSPs. We consider this to be both a fair and proportionate policy going forward.

Firstly, the assumed ability of one or more of the CMA9 to withdraw from the Future Entity is an area of huge concern for us and the future of Open Banking in general. We are not convinced that the CMA9 (and by extension other banks) have sufficient incentives beyond reputational to maintain their *membership* into the Future Entity. Naturally, exiting from the Future Entity is also likely to lead to lack of compliance with the requirements of the Order. Even if the CMA were to require the CMA9 to continue to comply with the requirements after leaving the Future Entity, chances are that this would fall down the priority list of these large organisations.

We disagree that the cost of withdrawing is minimal while the benefits are great for the CMA9. From an ASPSP perspective, the cost and benefit analysis is not a static equation, it is more about competition in the future. Maintaining a platform such as the Future Entity that supports innovation puts pressure on incumbents to innovate and compete more on quality which is of course a considerable cost for them.

Finally, we support the suggestion of extending membership commitment to 5 years. This would allow the Future Entity to better plan its revenue and also have more visibility of the direction of the industry.

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?

Yes, a funding model that does not require non-CMA9 account providers to pay for the cost of the entity would not be a proportionate model and would allow these providers to 'free ride' without making an appropriate contribution.

Our recommendation would be for all ASPSPs to contribute towards the funding of the Future Entity. It would be the most fair and practicable approach to the resourcing issue and given the relatively low funding requirements we cannot see how this would significantly impact the total costs of a banking entity.

Alternatively, if the CMA is concerned that the cost may be disproportionately high to impose on all account providers then there needs to be a threshold (revenue or current account coverage) above which non CMA9 ASPSPs should be asked to contribute to the funding of the entity. Ultimately, as we mention above, in the grand scheme of things, the OBIE's funding requirements are relatively small so we do not see any unintended consequences or disincentives arising from asking growing ASPSPs to contribute.

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, there are many lessons to be learned from the Open Banking experience and the most appropriate way of sharing these lessons would be by keeping these initiatives under the same entity. They all have a common purpose of opening up competition and innovation by harnessing the power of data. In addition, by adding more Open initiatives under the same entity, the revenue streams would increase thus alleviating some of the CMA's concerns around funding sufficiency.

We note that for each type of activity, it is imperative that the decision making and governance bodies are composed of different people with different expertise to ensure that decisions are appropriate for the industries that they are intended for.

In conclusion, we consider that insofar as standardisation issues and governance matters are concerned, it would be reasonable to keep Open Banking and Open finance activities under the same umbrella but with different members in the decision making committees. Policy direction and monitoring compliance can be kept separate.

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?

We don't agree that PIS and AIS services should be dealt with under separate schemes. This would only increase the administrative burden and the complexity of the ecosystem. Since technical standards have been standardised, both of these services should remain under the same scheme. If the two types of services in the future are faced with considerably different issues then subcommittees and working groups can be formed to tackle those issues. However, we propose that as much as possible there needs to be a centralisation of the work being undertaken by the Future Entity to ensure as much consistency and reduce any duplication of work.

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?

Yes, we have identified a number of concerns and also opportunities from the CMA proposals:

- We do not consider that the proposals are as *future proof* as they could be in light of Open Finance. Questions still remain around the way that different regulated activities will fit under the Future Entity, the ability to monitor compliance sufficiently and independently and the impact of the funding model on smaller TPPs.
- We do not consider that CMA9 entities should be given the option to leave the Future Entity. Such an action would significantly compromise the sustainability of the entity from a funding point of view but also from the implementation of technical standards perspective.
- We do consider that initiatives such as Open finance and Open Data should come under the same umbrella as Open banking. It is more efficient and it would allow for better information flow to inform the future and design of these initiatives.
- We consider that the most fair and practicable way of allocating the funding requirements for the Future Entity in the future would be to require all ASPSPs to contribute towards that budget.
- We do not consider that there are any reasons for PIS and AIS services to be dealt with by separate entities. This would only increase administrative cost and regulatory complexity.

Monitoring Arrangements

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?

Even though we understand the logic behind the CMA's view that an industry-led body would be unable to have responsibility for compliance monitoring of some of its members we do not agree with the principle that taking away the monitoring function from the Future Entity is the right answer here. We consider that the Future Entity should still be responsible for the monitoring function but the function should be entrusted to a group such as the old OBIE to maintain and deliver. The regulator is, naturally, concerned that there may be conflicts of interest given that some of the members have so far been asked to pay for the funding of the OBIE and may have influenced or delayed compliance monitoring reports. We strongly consider that the solution to this issue would be to require all ASPSPs to pay for the funding of the Future Entity. Following this approach would dilute any concerns around the independence and integrity of the Future Entity to maintain a compliance monitoring function.

The OBIE has built an incredible technical expertise which in any eventuality should be maintained and taken over into the Future Entity. As such, we strongly believe that they should be given the responsibility to monitor and surveil all the banks. The output from this surveillance function should at a minimum be a set of data and monthly reports addressed to the CMA and FCA that have the appropriate enforcement tools to take action.

At present, the FCA and CMA do not have access to the data, information and expertise that the OBIE holds to be able to run a strong supervisory function. The Future Entity (using information provided by the OBIE) would be much better equipped to provide this information to the regulatory authorities. To support the completeness of this reporting process, banks should also be asked to provide regular (monthly) reports to the Future Entity and the regulators.

Going forward, as the Open Finance space develops and other financial services come under its umbrella (open pensions, open insurance etc), from a structural point of view, we consider that the OBIE should remain an independent unit that runs in parallel under the Future Entity Group. The OBIE should remain responsible for the monitoring function of Open Banking implementation while similar entities can be made responsible for the monitoring of the compliance of the other *Open* Initiatives. This would ensure that the entire model is future proof and that surveillance does not come as an afterthought to the entire formation.

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?

Ecosystem monitoring would fit better with the OBIE as it currently stands and being brought under the Future Entity umbrella. Given the remit and objectives of this Future Entity, undertaking the ecosystem monitoring function would allow its Board to make better informed decisions around its policy and the design of the technical specifications.

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?

In our experience, we have not seen the benefits of appointing an independent professional services firm as a Monitoring Trustee to monitor compliance with the remedies. Such bodies do not have the necessary expertise to undertake this function, the auditing process happens too infrequently and is ultimately a waste of money for the Future Entity. Instead, the OBIE which has built this expertise over the years would be much better placed to undertake this function on a regular basis. We strongly recommend that the part of the OBIE responsible for the monitoring function should be maintained and given the authority to assess the level of compliance with the remedies.

Would it be practicable to find a firm that was not conflicted?

Yes to ensure that there are no conflicts of interest the firm needs to be independent to ensure no conflicts of interest with at least the CMA9. As we mentioned in our previous answers, the OBIE would be the best fit for this function and would meet the independence criteria once funding is allocated across all ASPSPs and not just CMA9. In terms of funding, we recommend that it is funded in a similar manner as the Future Entity i.e. ASPSPs pay for its functioning.

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.

It would be practicable and efficient for the new monitoring entity to perform this initial screening function as it will have direct access to the supporting evidence and it could also better assess each case on its merits based on the industry dynamics and existing expertise.

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?

In our view, there can never be enough monitoring. The main obstacle that we have encountered through our Open Banking Journey so far was the varied level of compliance with technical standards or the introduction of unnecessary frictions to customer journeys. Both defeated the letter and spirit of the law. As such we continue to believe that there should be an additional layer of monitoring on top of what the FCA has been doing so far with additional accountability requirements. For example, the findings of both the Trustee's monitoring function (OBIE being our suggestion) and the FCA's supervisory activities should be published to create an additional incentive for ASPSPs to a) comply and b) compete on the quality of their service.

In addition we would like to recommend that ASPSPs are asked to provide monthly reports in a standardised format on the quality and availability of their APIs to the CMA and FCA. This would provide a more complete picture to the regulators on the level of compliance across the industry.

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

It is imperative that going forward, the monitoring and enforcement side of Open Banking are clearly stipulated and regulators take a stronger stance against non compliance. The process for complaining and raising concerns to the regulator need to become more automated and there needs to be more transparency around the way in which non compliance has been dealt with after it has been reported. SLAs need to be set on the industry for remediating any system failures but also for meeting the regulatory requirements on them

Transitional arrangements – design considerations

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 OBIE's remit and functioning should be maintained and supported until at least the first 6 months of the Future Entity's operations. Even following the set-up of the Future Entity, parts of the OBIE such as the monitoring function should be maintained.

Secondly, there needs to be a clear roadmap that is well communicated to the entire ecosystem explaining how the Future Entity will function and how it would affect the different types of participants. The roadmap needs to be agreed in consultation with the industry and take into account changing competitive dynamics including the introduction of Open Finance.

For the services that the OBIE was delivering for the industry that may be migrated to the Future Entity, there needs to be sufficient testing before the migration to ensure that these continue to operate without interruption

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?

All stakeholders that were tasked with surveillance and monitoring of the ecosystem should continue to do so during the transition period including the Trustee. It needs to be made clear to the industry that compliance with Open Banking standards will not become optional during the transition period. In addition, we strongly consider that the OBIE's monitoring function should be maintained even past the transition period.

One way of enforcing the message to the industry that performance monitoring will continue during the transition period would be by initiating additional reporting requirements for ASPSPs during this time. Regardless of the duration of the transition period, ASPSPs should be asked to provide reports to the CMA/FCA of their API performance and availability - this should continue beyond the transition period.

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?

A Board comprised of both members from the OBIE and the Future Entity should be tasked with managing the transition process. The Board members should be appointed by the CMA and FCA with the PSR and HMT being observers to their meetings. Board members need to be independent and have sufficient expertise in migration processes to support continuity. The Board will be held accountable during the transition process and needs to be given a clear roadmap of milestones that need to be achieved before the Future Entity is fully operational. If the Board fails to meet its objectives then it would have to be dissolved and new Board Members called upon to deliver the transition.

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 consider that a principle based approach should be taken here. The CMA needs to clearly specify a set of objectives that need to be met before the full transition takes place but we don't consider that absolutely every minor detail needs to be delivered before the transition. This would simply delay the implementation of the remit of the Future Entity.

In terms of safeguards:

- The transition period needs to be set realistically and have in-built contingency plans and time allocated for potential delays

- The industry needs to be consulted and the transition plan agreed with both ASPSPs and TPPs. Regulatory involvement is necessary
- Whichever board or entity is managing the transition needs to be held accountable to the CMA and the consequences of poor delivery to be specified and published
- The board or entity responsible for the transition has to regularly communicate to OBIE participants the progress made on each of its objectives - this could be done through monthly reports

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?

Insofar as practicable yes the remit of the Future Entity should be reflected during the transition period, for example monitoring and surveillance should continue. However, a smooth migration needs to remain a priority and other objectives need to be prioritised according to the needs and urgency of the industry.

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

Yes, issues around the funding of this implementation period, metrics and reporting of performance availability, the introduction of Open Finance and the implementation of Strong Customer Authentication during this period.