

Response to Open Consultation on the future oversight of the CMA’s open banking remedies

Background

This document contains the views of TransUnion International UK Limited ('TransUnion') in response to the CMA’s “*Open consultation. The future oversight of the CMA’s open banking remedies*” published 5 March 2021.

TransUnion is one of the 3 largest credit reference agencies in the UK and is part of the TransUnion Group. TransUnion is authorised and regulated by the FCA under registration number 737740 and is a Registered Account Information Service Provider ('RAISP') under Firm Reference Number 805757. It is ultimately owned by a US company, also called TransUnion, which is listed on the NYSE: TRU.

Consultation Questions

Leadership of the “Future Entity”	
We invite views on the following questions relating to the leadership of the Future Entity:	TU Response
a) It is envisaged by UK Finance that the Members of the Future Entity would appoint the Chair with “votes weighted by participant type.”	<ul style="list-style-type: none"> • <i>Independence is key.</i>

<p>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>	<ul style="list-style-type: none"> • <i>CMA final approval should be sought for the candidate shortlist and for the final selection.</i> • <i>We do not believe the model proposed by UK Finance for appointing the Chair would meet the principles laid out by the CMA. For it to be truly independent and represent all constituencies, the Chair should be appointed by the CMA, on the recommendation of an Independent Panel. This model has been followed for other industry-funded self-regulatory bodies (e.g. the Financial Reporting Council).</i> • <i>We suggest the Board members are subject to the FCA’s SMCR regime including the requirements of fitness and propriety.</i> • <i>The CMA (or FCA) should also have the power to replace the Chair (and perhaps other Board members) to provide additional assurance that the Future Entity will act in the interests of all constituencies, especially as its funding model evolves.</i>
<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>	<ul style="list-style-type: none"> • <i>It is to be assumed that the CEO will have a seat on the board.</i> • <i>We believe that the representation of consumer interests should enshrined either through additional representation or through requiring certain matters to include the approval of the consumer representative - voting rights etc will be key.</i>
<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</p>	<ul style="list-style-type: none"> • <i>Yes given central role further transparency is desirable.</i> • <i>Oversight should continue either through the CMA or the Financial</i>

<p>would be appropriate to impose on the Entity's Board like those imposed on the OBIE?</p>	<p><i>Conduct Authority and overall by Her Majesty's Treasury.</i></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 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, therefore? And if we cannot be confident what steps should be taken to mitigate this risk?</p>	<ul style="list-style-type: none"> • <i>Consideration could be given to bringing the independent Chair and the CEO / executive roles within the scope of the FCA SMCR regime to ensure accountability.</i>
<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>	<ul style="list-style-type: none"> • <i>The CMA could suggest a review of the model after say 5 years. The CMA should retain the right to recommend transferring these powers to an existing statutory regulator (e.g., FCA) or stand a new one up if the Future Entity is not effective.</i> • <i>Whilst there has been significant thought given by UK Finance to the Future Entity, we would encourage a broader view to be taken by CMA. This could include a similar model to the setting up of the Payments Systems Regulator ('PSR') under the Financial Services (Banking Reform) Act 2013 as an independent subsidiary of the FCA.</i> • <i>Such an Open Banking regulator would mirror the CMA objectives by having similar statutory objectives around competition, innovation and a service-user objective to ensure Open Banking systems are operated and developed in a way that takes account of, and promotes, the interests of service users and consumers.</i>

The proposed funding model	
We invite views on the following questions:	TU response
<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>	<ul style="list-style-type: none"> • <i>See response above - whilst the UK Finance proposal does meet the current needs, we would suggest there is merit in viewing this regime with the same approach as was taken to the Payments Systems Regulator.</i> • <i>The PSR structure, under the FCA has successfully led to innovation and security for customer and given confidence to that market place in a way that Open Banking still needs to achieve.</i>
<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? 	<p><i>No comment</i></p>
<ul style="list-style-type: none"> • 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? 	<ul style="list-style-type: none"> • <i>As the alternative funding sources for the Future Entity are uncertain, the CMA should secure a guarantee from the CMA9 to cover any funding gaps until these materialise to ensure that the entity can fulfil its role.</i>
<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? 	<ul style="list-style-type: none"> • <i>It would appear challenging to expect that the cost profile would decrease in the expectation of an increase in the scope and remit of the future entity.</i>
<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</p>	<ul style="list-style-type: none"> • <i>This is reasonable. Most TPP’s are low capitalised fintechs whose role is to create innovation and competition in this market.</i>

<p>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>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>	<ul style="list-style-type: none"> • <i>These should form part of core functions of the Future Entity constitution and purpose.</i>
<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>	<ul style="list-style-type: none"> • <i>See above</i>

<p>Representation of consumers and SMEs</p>	
<p>We would welcome views on the following issues relating to customer representation:</p>	<p>TU response</p>
<p>a) Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?</p>	<ul style="list-style-type: none"> • <i>The key to this will be not only be a board seat but the authority and powers vested in that representation.</i>
<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>	<ul style="list-style-type: none"> • <i>Yes in principle, this could be augmented by a requirement for public consultation on significant new initiatives and developments of the framework.</i>
<p>c) What process and criteria should be used to select the consumer representatives on the Board and Advisory Committee? Should there,</p>	<ul style="list-style-type: none"> • <i>Experience and knowledge of the payments systems and data environments is key. Insight into e.g.</i>

<p>for example, be a specific reference to the needs of vulnerable or less well-off consumers?</p>	<p><i>how OB can assist “thin file” consumers would be useful but any insights into transparency, clarity and security of data would pertain equally to non-vulnerable groups.</i></p> <ul style="list-style-type: none"> • <i>Consumer education should be part of the mandate.</i>
--	---

<p>Sustainability / adaptability</p>	
<p>In considering the sustainability and adaptability of the proposed arrangements, we invite views on the following:</p>	<p>TU response</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) 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>	<ul style="list-style-type: none"> • <i>THE CMA 9 definition should be significantly flexible to accommodate changes to the UK leading retail banks. Given their pivotal role, and the benefits to their customers, membership of this framework should be a perpetual requirement for CMA 9 under the FCA regime.</i>
<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>	<ul style="list-style-type: none"> • <i>The CMA 9 definition should be flexible enough to expand to include any banks over a certain threshold of retail customers.</i>
<p>c) Could or should the Future Entity, as UK Finance has suggested, be a suitable vehicle for the implementation of other “open” projects</p>	<ul style="list-style-type: none"> • <i>We do not believe this is desirable. It is too early in the OB experience to burden the Future Entity with</i>

<p>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 to accommodate their requirements?</p>	<p><i>additional responsibilities until the regime has been adopted much more widely.</i></p> <ul style="list-style-type: none"> <i>We understand that this would be a matter for HM Treasury rather than the CMA and do not see merit in undertaking, market investigations in those areas.</i>
<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>	<ul style="list-style-type: none"> <i>We believe these should be kept together - if an entity must deal with two different bodies it will create more overheads and potential confusion.</i>
<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>	<ul style="list-style-type: none"> <i>No comment</i>

<p>Monitoring and Compliance</p>	
<p>Views are invited on any aspect of monitoring but in particular:</p>	<p>TU response</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 OBIE which it may also use for its own purposes. Is this</p>	<ul style="list-style-type: none"> <i>Given its proposed wide representation, and with oversight from the FCA as suggested, it may seem reasonable for Future Entity to be given the responsibility for monitoring the compliance of the CMA9 with the Order? However, oversight from the FCA (either as a statutory subsidiary such as the PSR or as part of its overall supervisory framework) would provide assurance to industry and stakeholders would be preferable.</i>

<p>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>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>	<ul style="list-style-type: none"> • <i>Given its proposed wide representation, it would seem reasonable for Future Entity to be given the responsibility for ecosystem monitoring subject to comments below.</i>
<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>	<ul style="list-style-type: none"> • <i>Finding a firm without conflicts and who would still have the capability and capacity to undertake this work is unlikely. As the framework matures, and with oversight from and accountability to FCA and HMT, this should no longer be seen as a compliance remedy but a revised regulatory framework which moves to normal regulatory supervision with all the tools the FCA would have to monitor compliance.</i>
<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>	<ul style="list-style-type: none"> • <i>No comment</i>
<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 monitoring activities be an effective substitute for the activities of the Trustee’s monitoring function?</p>	<ul style="list-style-type: none"> • <i>Agreed. This system should become part of the FCA’s overall supervision</i>
<p>6. Are there any other issues regarding monitoring and compliance which the CMA should be aware of?</p>	<ul style="list-style-type: none"> • <i>No comment</i>