



**CMA Consultation:**

**The future oversight of the CMA's open banking remedies**

**Ordo response**

Submission to: [RemediesMonitoringTeam@cma.gov.uk](mailto:RemediesMonitoringTeam@cma.gov.uk)

*The following information is the property of The Smart Request Company Ltd, trading as Ordo ("Ordo") and is provided to you in response to the above consultation only.*

*The information is only to be used by you in connection with the consideration of the future oversight of the CMA's Open Banking remedies, it is not to be used by you for any other purpose. It may be published only for this consultation purpose and without alteration.*

*The commission of any unauthorised act in relation to the information may result in civil or criminal actions being taken by Ordo in relation to this matter. Any licences issued by the Copyright Licensing Agency Limited do not extend to this matter. All opinions and forecasts contained herein are the opinions of Ordo and are made in good faith at the time of publishing.*

## Context and Introduction to Ordo

### *Who we are:*

We are Ordo, the trading name of The Smart Request Company Ltd (company number 11338545). We are a fintech start-up and TPP. We are regulated by the FCA to carry out AIS and PIS under FRN 836070

The five founding directors incorporated the business in May 2018, having previously worked together in the Faster Payments Scheme, driving new competition in banking and payments and transforming access to the Systemically Important payment system. Whilst we were the leadership team at Faster Payments, we instigated bringing on new challenger banks and other PSPs such as Monzo, Starling, Atom, ClearBank and Transferwise. The team were awarded the Payments and Cards Awards Industry Achievement Award in 2017 by their payments industry peers for their work to allow Transferwise and its customers direct access to the Faster Payments System.

Following our time at Faster Payments, we set up Ordo to build and run Open Banking enabled solutions such as Request for Payment, eCommerce and Account Details Verification services, amongst others. We are backed by Nationwide Building Society, and are fully integrated with the well-known accounts package services QuickBooks, Sage, Xero, and banking platforms such as Contis. We are partnered with CGI to run our platforms.

The first of our solutions, our Request for Payment service, went live on 23 March 2020. More than £2 million has been requested through Ordo and we have saved businesses an average of £28 per transaction, helping businesses and consumers pay and get paid easily.

### **Ordo's company purpose is:**

to improve financial wellbeing of individuals, businesses, social enterprises, charities, community groups and the public sector by helping them to be more in control of their finances. We do this by:

- enabling payers to securely and simply see what they've been asked to pay, trust who's asking, and then choose how and when they make or don't make payments;
- enabling billers to securely, simply and cost effectively provide information to, and request payments from, their customers without having to gather, store and protect payers' private financial information; and
- enabling billers to understand the status of their payment requests and receive settlement irrevocably and without delay from their customers, directly into their bank accounts.

We are leveraging our collective experience in payments, technology, consumer markets and regulation to achieve this.

### *Our view and what we think a secure payments future should look like:*

We are creating a better way to request and make payments with new, secure end-to-end competitive digital payments overlay services. We believe the solutions we have built are an important part of the strategic long-term solution which will afford all payers, be they individual consumers or businesses of any size, the confidence and assurance that their payment has gone to the intended destination, and businesses to be able to receive payment instantly, securely and at low cost.

If every payment begins with a request from the biller concerned (which could be a consumer or a business) with the business providing its account and reference information via Open Banking AIS, this significantly lessens the likelihood of a payment going to the wrong destination and being defrauded. A biller's request for payment, be it via a specific Request for Payment service, or via one of our Open Banking enabled eCommerce, QR code or point of sale solutions, will contain the account details for the biller as obtained from an Open Banking AIS call, and these are neither revealed to, nor can they be changed by, the payer. The receiving (of the request for payment) potential payer will then only choose to pay the request if they recognise the biller, what the requested payment is for and if it is for the correct amount.

## Summary

We agree with some of the opening statements of the CMA consultation that, although the core elements of open banking are now in place.... it is not inevitable that it will continue on the same trajectory. The largest banks have built open banking functionality, but it is far from guaranteed that they will continue to maintain and develop these without some form of regulatory incentive/imperative. The larger ASPSPs and indeed any ASPSP does have an incentive to slow the further development of the open banking ecosystem as this does, at times, conflict with their own commercial objectives.

This dichotomy, coupled with the message from UK Finance's report (the "*Report*") which states an aim of the "Future Entity" is to lower the costs of running Open Banking capability and to generate commercial revenue to assist funding means it is crucial the CMA ensures any governance framework meets its criteria.

We would not propose a company owned by (amongst others) the ASPSPs to continue the maintenance and development of Open Banking. However, if this model is to be progressed, in order for the Future Entity to be adequate, it must accommodate:

1. *Independently accountable maintenance of APIs, with development potential* such as that for VRP, to keep pace with a changing world and avoid becoming obsolete through lack of development like big bank legacy systems, must be ensured;
2. *Vision and Mission including TPPs as innovation will only be delivered by TPPs*, they must have a central role in the Vision and Mission to enable the Future Entity to be held to account to enable TPPs to deliver such innovation;
3. *Adequate funding that does not include charging PSUs or PISPs for services* that ASPSPs are either required to provide by law or where ASPSPs derive payment from elsewhere in the supply chain; and
4. a *governance framework* that ensures accountability *beyond its own members who will include the ASPSPs*, as a seemingly independent and balanced board is not enough to counter the size and capacity for influence the larger ASPSPs will have.

This is what is necessary to ensure the ongoing provision of Open Banking capability in the UK and for Open Banking including its payments initiation services to have a chance at becoming mainstream and delivering benefits to SMEs and consumers and the wider UK economy. Without this, the gains that have been made for some using Open Banking to date will be scaled back, technology and consequent adoption will be progressed at the rate of the slowest ASPSPs in the industry. It will hinder Open Banking being able to play its part in Open Finance and this opportunity will be lost and will result in ASPSPs retaining undeserved market dominance with no innovation for consumers or SMEs.

### 1. Independently accountable maintenance and development of APIs

It is essential there is independent oversight of the service provision of Open Banking APIs. This includes ensuring ASPSPs deliver a consistently good, secure, reliable and dependable service to TPPs. Where an ASPSP's functionality fails, the PSU does not blame the ASPSP, the PSU blames the TPP, which undermines not only the TPP but also Open Banking and threatens its adoption.

The maintenance of APIs must include operational services such as dispute management, a ticketing system for issue management, standards (development and maintenance), directory services and horizon scanning for support TPP innovation without which TPPs and their services will not be able to evolve with society and remain useful.

Real examples of where the lack of secure and reliable service and maintenance of APIs have occurred during our build phase. We experienced many instances that we repeatedly brought to the attention of the OBIE and the FCA where ASPSPs were not delivering either to the standard of the OBIE protocols, or providing an equivalent service to their end users via Ordo as provided to their end users directly, as is required under the equivalence requirements in PSD2.

Whilst these issues are being resolved, it appears to the PSU that the TPP is at fault; it a hard message to convey to a non-payments expert PSU that it is the ASPSP's Open Banking API element of the TPP journey that is not working, rather than that the TPP's service. Such issues are then resolved in large bank time scales which are not tolerable by smaller companies seeking adoption of a new technology. It is this impression, if allowed to continue and if ASPSP provision of APIs is not sustained, will not only halt the adoption of Open Banking but cause the progress that has been made to recede.

## 2. Vision and Mission

Establishing a clear vision and mission for the Future Entity, as proposed by UK Finance, is essential. Currently it is proposed to be:

*'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'*

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 fundamentally driven by the effect and success of TPPs**. It is only through TPPs that benefits can be delivered. Given this, the vision, and accompanying mission need to explicitly include the equally important duty of the Future Entity to TPPs.

Perhaps the vision would be better stated as:

*'Enabling TPPs to deliver the 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.'*

The importance of the Future Entity supporting TPPs will then need to be captured in the mission statements. This will better balance the duty of the Future Entity to TPPs, who will drive benefits, and ASPSPs who will enable them.

## 3. Funding

The maintenance of existing and future natural developments of existing APIs (such as VRP) should remain a commitment of the CMA9 pursuant to PSD2.

UK Finance's Report clearly sets out the aims of the Future Entity will be to lower running costs and to build a commercial arm to generate revenue to contribute to the CMA9's running costs of Open Banking capability. Whilst there is reference to fees not being an obstacle to TPPs, there is risk in the model proposed by UK Finance that TPPs would not have commensurate influence in the Future Entity as ASPSPs (see comments on Governance below), and the only accountability of the board of the Future Entity is to its members for charges, where many members will be ASPSPs.

It is imperative that the Dispute Management System and Service Helpdesk sit within the Future Entity. In Ordo's experience, the current Service Desk in particular provides a good and necessary service; this is in large part repeated chasing of ASPSPs who are slow to respond and provide updates to open issues which affect TPPs. If ASPSPs were more responsive, some Service Desk costs could be reduced as it drains resource to hold multiple large scale and otherwise APSPs to account to deliver the CMA Order. 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. There needs to be a formal mandate with the ASPSPs (not just the CMA 9, but all registered ASPSPs) that specifies their response time to problem response and resolution.

The tone of the report is that the CMA9 wish to decrease their exposure to funding Open Banking for the industry, as they would see it, and they have clearly drawn out that they funded 84% of OBIE costs. As highlighted at the beginning and in the consultation document, the CMA9 have an incentive to drive this cost down and recover what costs are incurred from putting as much as possible into service commercial costs. The intention to lower costs and recover as much as possible is clear from the proposal and this becoming self-regulated risks the nascent market for

Open Banking, particularly payments initiation, never becoming mainstream. As stated above, a proportion of Service Desk resource is engaged in keeping pressure on the ASPSPs to action the changes they need to make to either fix bugs, deliver the correct functionality, or meet the expectations articulated in the Customer Experience Guide. How will this be quality controlled and ensured if the Future Entity is run by board comprising ASPSPs and which is accountable to members who are ASPSPs?

Further, the Report states:

The board should strive for operational efficiency in provision of services and capabilities to the market, with a focus on value for money driven by market demand. The board will have the ability to discontinue services where they are either no longer required by the community, show limited commercial potential, or are more effectively provided by other market providers.

Whilst Open Banking has taken off, it is not yet ubiquitous, especially payments initiation services and SMEs and consumers are yet to be fully aware of, and benefit from, the time and cost savings, and convenience that payments initiation Open Banking services can bring. For such Open Banking products and capabilities to be provided on a market demand basis is a distortion of what is needed at such an early market development stage. The market is not established enough to be driven by demand to determine capability, there is still a need for advertising Open Banking capability, legitimising the technology (with which HMRC using Open Banking will help) to garner the trust of users who are not finance or payments industry experts.

To leave services to be provided according to market demand would damage the provision and adoption of, Open Banking and, ultimately, the opportunity for the UK that Open Banking presents. An example of this is again our experience in building our service and discovering the faults in ASPSP APIs. In reporting these defects and waiting for them to be fixed in a large ASPSP timescale, a response we often received was that these matters were low priority and/or fixes put into tech change schedules that were months away in part because ASPSPs did not have the volume of usage to make Open Banking fixes more of a priority. However, this is a circular argument in that, until the fixes are complete and service is consistently good and reliable across banking institutions, consumers and SMEs will not have an awareness of, nor trust, Open Banking technology and consequently volume usage will never escalate; there will never be the imperative to build and fix if volume usage is a predication.

Additionally, the revenues that ASPSPs make from legacy payment instruments (such as fees from cards – issuance, interchange, interest and acquiring) provides a disincentive to invest adequately in 21<sup>st</sup> century alternatives such as Open Banking. TPPs in the payments-space are predominantly operating low-fee, low margin transactions (being motivated by delivering cost-effective solutions to help businesses and consumers)

In addition, further nervousness arises in reading:

While the initial proposal for 2022 is to not include TPPs in the Annual Funding Requirement, future market evolutions may dictate a change to this approach, in the interests of maintaining a fair and equitable commercial model. In summary, the funding model may evolve as the market evolves. For example, as Open Banking Payments grow, large non-financial institutions may choose to become TPP members of the Future Entity, at which point consideration would be given to those entities being asked to contribute to Annual Funding Requirements alongside member ASPSPs.

However, Annual Funding is described as, on page 26 of the Report:

“Where Fee Income does not cover the Future Entity’s operational costs, Member ASPSPs should provide the residual funding proportionally – TPPs should not be asked to contribute any residual funding.

We see a risk that TPPs will be brought in to top up the CMA9’s obligations to fund Open Banking by so-called future market evolutions. TPPs will not have the resource to negotiate these changes, and it is not apparent as to how ASPSPs will be kept honest in this decision if they are only accountable to the Future Entity’s members, of which they themselves will be many.

#### 4. Governance

The CMA states that it must ensure the future arrangements for the governance of open banking results in a framework that is:

- independently-led and accountable
- adequately resourced to perform the functions required
- dedicated to serving the interests of consumers and SMEs
- sustainable and adaptable to future needs of the ecosystem

The Report aligns with the external consultant's recommendation for the consolidation of Pay.UK. The payments ecosystem has been through this kind of change transition with this company limited by guarantee with an independent and industry expert board composition before.

The risks we see with this model from a governance perspective are 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 seems to be no accountability to ensure they do not act in their own commercial interests. It does not seem to us that accountability to members of the Future Entity is enough to meet the CMA's criteria for a replacement governance framework.

We also note the proposed board composition and its seemingly balanced numbers. 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 a TPP in a growing market will not have the staff to attend. This, along with the 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.

We cannot see how the Future Entity, in the model as set out by UK Finance, could be independently-led and accountable, or how it can be dedicated to serving the interests of consumers and SMEs given their commercial incentive as outlined in this response and, in the same vein, how it would evolve to be sustainable and adaptable for future needs of the ecosystem given those same commercial incentives and lack of independence and accountability.

Accordingly, the governance model as described is incomplete. In our view, there needs to be a completely independent higher authority that stakeholders can appeal to if they believe that the Future Entity is not delivering against its vision or mission. With the OBIE this ultimate oversight is the CMA. The authority, which needs to be an appropriate regulator or government department, needs to be identified, and then processes for appeal and mechanisms for the authority to direct the Future Entity need to be in place. By way of analogy, Pay.UK is ultimately overseen by the Bank of England for systemic integrity issues, and the Payments Systems Regulator (PSR) for competition, innovation and meeting the needs of service user issues. Who will oversee the Future Entity, and how will that work?

### Variable Recurring Payments (“VRP”)

A development of the basic APIs that must also be mandated is the Variable Recurring Payment API. The functionality for this has already been mandated in the sweeping mechanism and this represents an easy extension of benefits to SMEs, consumers and the UK with little extra cost.

The time is also right to ensure that VRP can succeed with the consideration of how the NPA is going to be delivered. The PSR is proposing that Pay.UK procure a real time payments capability in the immediate term, with a replacement for the more complicated Bacs system, which includes Direct Debit, to come later. This gives an opportunity for more digitally enabled tech solutions to emerge which can provide a richer more fitting service for today's economy and society.

There is no reason, with Open Banking technology implemented and mobile/online banking penetration up to around 80% in the UK, that old services that were designed for the 1970s should be replicated in the 2020s.

VRP is the natural progression from direct debit to Open Banking enabled repeated payments and, as mentioned above, requires little extra functionality and build given that sweeping has been mandated. It also reduces the level of complexity and cost of providing the Central Infrastructure for payments, further benefitting all participants in the ecosystem (Pay.UK, ASPSPs, PSUs and TPPs). Retention of legacy/obsolete technology is a drag on the economy.

Making VRP APIs part of the core proposition that ASPSPs must provide would truly allow the exploitation of Open Banking and its capability, usefulness and universality of payments coverage to businesses and consumers alike, where so many more payments are repeated.

Furthermore, the model that this be a premium API which can be provided commercially to TPPs does not work. Every ASPSP is the monopoly provider of access to its customer base via its VRP APIs, and for every TPP to negotiate with every ASPSP individually for access to its VRP API would only result in prohibitively high costs such that it is likely that provision of VRPs via TPPs would be unviable. This would be a severe dent in the coverage of Open Banking. Therefore, there must be independent external pressure to ensure enough provision for innovation and development is within the scope of Services to be provided by the CMA9 to allow Open Banking to continue to develop to allow it to be taken up by/meet the needs of businesses and consumers.

### Conclusion

For Open Banking to continue to be adopted, the CMA9 must be required to continue to provide and maintain the APIs in place today and the natural evolution of current APIs to support society as it progresses such as VRP, include TPPs as central to its vision and mission and have an independent oversight authority for appeal with mechanisms and processes in place for such authority to direct the Future Entity, costs must be guaranteed by the CMA9 without recourse to TPPs and care must be taken to limit the disproportionate influence of ASPSPs which have conflicting commercial interests to the success of Open Banking.

We are a commercial TPP providing multiple Open Banking enabled competitive solutions and are live in the market today. We have been running our *Request-for-Payment* solution for over a year, more than £2 million has been requested and we have saved businesses an average of £28 per transaction. We are connected to 97% of the banking market. See our range of [solutions](#), [learn more](#) or [try for free](#) today.

Our response is being led by one of our co-founders, Fliss Berridge, and can be contacted at [fliss.berridge@ordopay.com](mailto:fliss.berridge@ordopay.com). You can talk to her directly on [REDACTED]