



26 March 2021

Dear the Remedies Monitoring Team,

Response to Competition & Markets Authority's consultation on the future oversight of the CMA's open banking remedies on behalf of Compare the Market

Please find below the response on behalf of Compare the Market (CTM) to the above consultation.

CTM, as a leading Price Comparison Website, is uniquely positioned to provide customers with seamless comparison using our Open Banking capability. CTM sees great potential in Open Banking as customers proactively manage their regular spending and identify savings with our comparison scale and expertise. Our strategic goal is to transform the way customers manage their household bills, helping everyone to have a healthy relationship with their money. CTM has already launched its open banking proposition, 'Your Bills', empowering customers to see all their bills in one place and take control through proactive spend monitoring. CTM aims to utilise Open Banking and Open Finance to further support customers to have a holistic view of their financial circumstances and through increased engagement, to make it easier for customers to act on this information.

CTM is supportive of the proposed form of the Future Entity subject to further consultation and Cost Benefit Analysis on key governance, funding and fees considerations:

- The Future Entity's Board is representative of those participants of the ecosystem whose activity will be affected by the Board's decisions; with no dominant group/party to embrace fairness.
- The funding structure is based on a fair and equitable contribution and CTM explores below how this could be defined, whilst acknowledging that the levy should not be prohibitive to participation.
- The funding proportion should not have any weighting on voting rights/influence and this should be a level playing field based on one vote per membership to embrace equality.

CTM sees this consultation as an opportunity to shape the Future Entity's function for the benefit of the Open Banking ecosystem and would like to see:

- The OBIE's availability and performance reconciliation function maintained going forward and for the Future Entity to have a regulatory recourse mandate on noncompliant behaviour.
- The OBIE notification of bank's planned downtime standardised and in accessible format and extended to the unplanned downtime.
- Proactive testing of Account Servicing Payment Service Provider's Application Programming Interface to identify issues earlier, without relying on customer to report.
- The centralised service having clearly defined Service Level Agreements and be expanded to include adequate escalation measures.

CTM's detailed response, structured in accordance with the higher-level CMA questions as headings grouping responses to the relevant UK Finance detailed questions, is set out below.

CTM welcomes the offer of a bilateral meeting to discuss our input further and would like to express an interest in supporting the governance of the Future Entity with our representation.

Yours faithfully,

comparethemarket

Detailed response

1. Whether the successor organisation proposed by UK Finance proposals will be: independent and accountable; adequately funded; dedicated to serving the customer's interests; and robust and sustainable.

Independent and accountable

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 (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?

In CTM's view the Chair should be selected by the members of the Future Entity and vetted by the relevant regulators that have mandate/interest over Open Banking/Finance. The Chair should be appointed on the basis that they can provide an unbiased and independent governing role to ensure all constituent groups are fairly represented. In addition, they should ensure transparent decision-making based on the necessary internal consultations through the internal levels of governance.

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?

Overall, the suggested composition of the board appears pragmatic and looks to promote an adequate representation of the OB ecosystem. It would be prudent to implement measures to ensure that no particular entity dominates decision-making.

However, it is noted that it does not include representatives from Card Based Payment Instrument Issuers, or Technical Service providers, whose businesses are also centred around secure and efficient access to customer data. Consideration should be given to how those organisations are represented at the board. The market representation should also be overlaid with diversity of skills; background and personal strengths as these are important drivers of a board's effectiveness creating different perspectives among non-executive/executive directors.

Some thought should be given to (i) who should constitute the necessary quorum so that all the interests are adequately represented and there is no risk of one party/group dominance; and (ii) how the consensus should be defined with the Chair having the ultimate authority to arbitrate.

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?

The board should be accountable to an appropriate regulatory body. In terms of which regulator this should be, we suggest the FCA as they have concurrent competition powers with the CMA under the Competition Act 1998. In addition, they maintain the relevant permissions regime for market players.

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 as a consequence? And if we cannot be confident what steps should be taken to mitigate this risk?

The following steps could mitigate the risk of one party/group exerting too much power and influence over decision-making:

- The board could be structured on a similar basis to the current Implementation Entity Steering Group (IESG), This would enable the representatives to voice a broad view of the group that they represent. The representatives should have equal voting rights with the representative of the CMA9 group. Therefore, the decisions would be carried by a simple majority, 1 vote per organisation, decoupling weight of vote from financial contribution.
- In line with the current working practices of the OBIE's IESG, the board should include observers from the HM Treasury, Payment Systems Regulator, Information Commissioner's Office and FCA to ensure coordination and cooperation. In our view, the participation of the regulators would encourage and enable decision-making.
- The board effectiveness review on reoccurring basis with the requirement to publish the outcome in the interest of completeness and transparency.

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?

No comment.

Adequately funded

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?

No comment.

b) Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:

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

Given that the anticipated external revenues may or not materialise in 2022 or be maintained after that date, how can the CMA and other stakeholders be confident that the budget of the Future Entity will be adequate to deliver the residual requirements of the Order? How should the Future Entity set priorities in the face of a potentially reducing budget and competing requests for investment in future developments, including from the Participant Groups?

A detailed Cost Benefit Analysis (CBA) should be conducted before any governance framework/intervention is mandated to ensure proportionality and to understand the most costly/beneficial aspects of the policies. The output of this CBA should be made public to ensure transparency and aid decision-making. CTM trust that there are lessons learned in that respect from the Open Banking implementation.

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?

In CTM's view, the funding structure should be based on a fair and equitable contribution, which should account and be proportionate to the firm's size and usage; but also, should reflect:

- i. the costs attributed to the compliance with the CMA Order;
- ii. the PSD2 compliance maintenance (costs allocated to ASPSP); and
- iii. the costs attributed to the development of any premium (non PSD2/CMA) APIs.

In that context, we are supportive of a funding structure based on:

- i. separating the monitoring function required under the CMA Order, which should be funded by CMA9, from other services provided by the Future Entity;
- ii. reusing the OBIE capabilities and segmenting the future Open Finance functions based on product, so that cost can be fairly and proportionately allocated; and
- iii. not disproportionately burdening the banking sector with the non-CMA and Revised Payment Directive's costs, but instead distributing them on a 'fair and equitable' basis amongst the relevant participants.

One of the options could be to align the Future Entity funding structure to the FCA fees structure. The application of the tariff data could address our concerns above around the basis for 'fair and equitable' cost allocation as the tariff varies across the fee-blocks and is used as a measure of the scale of a firm's activities.

However, we also urge against rushing with any policy decisions and perhaps a more opportune timing for reviewing the funding structure of the OBIE and conducting the CBA could be following the implementation of Open Finance.

We would welcome a consultation period when the CMA is in the position to propose funding model principles.

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?

CTM sees this consultation as an opportunity to shape the Future Entity's function for the benefit of the OB ecosystem:

- i. CTM values OBIE's non-regulatory function of providing a balanced view of the overall health of the Open banking ecosystem by reconciliation of ASPSPs and TPPs statistics on availability and performance. We would like to see this function maintained going forward and perhaps the Future Entity should be given a mandate to have a regulatory recourse based on noncompliant behaviour. Reliability and availability of bank's APIs is crucial for Third Party Providers and frictions impact negatively on customer experience.
- ii. CTM would like to see the OBIE advance notifications of bank's planned downtime being maintained but would suggest that these are standardised and in accessible format, as currently they differ in respect of content and articulation of impact. We further propose that banks inform the Future Entity at the time the unplanned downtime is happening, what services are affected and the potential length of the outage so that the Future Entity can cascade the information in the way that enables us to judge materiality and impact on our business model, for example, based on some status report.
- iii. CTM supports expanding this function to include proactive testing of ASPSP APIs to identify issues earlier, without relying on end customer to report. This would benefit all Members and highlight repeated problems that may need to be addressed.
- iv. The Future Entity should continue to provide a centralised service desk function for troubleshooting issues with members, however, this should have clearly defined SLAs and be expanded to include adequate escalation measures.

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?

No comment.

Representing of consumers and SMEs

a) Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?

We understand that the current proposed board composition provides for one director nominated for appointment as a consumer organisation representative. In our view, the interests of consumer and SME are likely to differ, so we propose in the interest of inclusion that SMEs population should have its own representative at the board level to ensure appropriate makeup. We further understand that the broader perspective will be fed to the board through its engagement with the Advisory Committee.

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

As above

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?

CTM understand that the role of the consumer representative is to represent the consumer perspective; serve as a liaison between the Board and the interested consumers, associations and consumer organisations and facilitate dialogue with the Advisory Committee on issues that affect consumers. Therefore, we assume that there are two parts to the selection criteria that include their constituency, so the group of people who use the service or are affected by the decisions that will be made, and their level of knowledge and experience, their networks and meeting skills.

Sustainability and adaptability

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?

CTM do not have a preference, however the longer the CMA9 funding commitment the higher the probability of the Future Entity's sustainability. As suggested above, the CMA may want to conduct the CBA and as part of that consider what impact the different funding scenarios will have on Future Entity's sustainability.

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?

No comment.

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?

The development of a new Open Finance/Data policy for the UK would require the introduction of new legislation and regulation for which they may not be an EU equivalent. The drafting of such policy will need to take into account the UK's relationship with the EU and global market to provide for interoperability. The regulatory landscape is uncertain as we are still awaiting the input from:

- i. The FCA's outcome of their consultation on Open Finance, which will clarify how feasible it is for the open finance to develop in interoperable and cohesive way without

regulatory intervention and whether there is an adequate framework of data rights in place;

- ii. The outcome of the BoE's consultation on its vision how the open data across the whole of the economy could ease frictions in the financial system;
- iii. The output from HM Treasury's Payment Landscape Review;
- iv. The outcome of the Pay.Uk consultation on the New Payment Architecture; and
- v. The Pay.Uk and PSR's consultations on consumer and payment protections.

In that context, CTM's preference would be that the processes and standards set for Open Banking are applied not just to the rest of the banking sector, but to the other sectors as Open Finance rolls out. Firms should be required to have Operational Guidelines for technical performance, Customer Experience Guidelines and a variety of other mandated deliverables. Further, CTM's preference would be for levelling the rest of the market and upgrading it to the CMA9 quality of infrastructure/ standards. These need to be developed in policy, set out in a legal/ regulatory framework and orchestrated with oversight, monitoring and enforcement capability.

Against that context, one option of the Open Finance implementation within the Future Entity could be to segment it based on products/area, which, as discussed above, could be an enabler for the cost to be fairly and equitably allocated.

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?

While the development of payment standards may call for a separate initiative or working group, CTM would prefer that all maintenance and oversight services sit centrally to avoid duplication of effort by firm who hold multiple permissions.

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?

No comment.

2. **What compliance monitoring arrangements will it be necessary for the CMA to put in place going forward.**

a) 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?

CTM is supportive of the CMA carving out the CMA9 monitoring of conformity and performance function based on the undertaking that this function will be consulted on by the CMA separately and continue whatever the shape/form of the OBIE's successor.

In order to increase efficiency, produce cost-savings for the industry and free up some resource we recommend that this compliance monitoring function is reconciled within the FCA standardised regulatory reporting, which will avoid regulatory duplications as the data is also used for effective supervision. As the FCA already regulates the Open Banking participants; is in receipt of the Open Banking notifications under the Payment Services Regulations, it will be best placed to get a holistic picture of a firm's regulatory compliance and have a supervisory/enforcement mandate to take appropriate action.

b) 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?

CTM's view is that the ecosystem monitoring function would be best suited within the Future Entity's mandate. The Future Entity should also have means, through its governance and engagement with Advisory Committee, of ensuring that what is being put out into the market works for the end customer, the banks and TPP are leveraging it whilst offering customer protection and a supporting dispute management framework.

c) 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?

No comment.

d) 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.

CTM's view is for the FCA to perform this function based on CTM's response to question (a) above.

e) 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?

As explained above in (a) and (d), CTM's view would be to reconcile the monitoring function within the FCA's standardised regulatory reporting to increase efficiency; introduce cost-savings and avoid regulatory duplications.

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

No comment.

3. What transitional arrangements should be adopted and when should the process begin

a) 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?

We do not have a specific view or preference and will welcome CMA's proposal.

b) 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?

We do not have a specific view or preference and will welcome CMA's proposal.

c) 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?

We do not have a specific view or preference and will welcome CMA's proposal.

d) 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 do not have a specific view or preference and will welcome CMA's proposal.

e) 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?

We do not have a specific view or preference and will welcome CMA's proposal.

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

In terms of sequencing between the completion of the CMA Final Roadmap Order, the output from the FCA Call for Input on Open Finance and the Department for Business, Energy & Industrial Strategy's Smart Data Working Group, CTM is supportive of Financial Data and Technology Association high-level recommendation:

- i. Remove 90-day reauthentication as soon as possible to enable better business models to emerge;
- ii. Build a system of customer redress for data sharing;
- iii. Require non-CMA9 firms to align with the CMA Order for the Revised Payment Services Directive's scope and for product reference data. The CMA Order should stay in place until this happens and is superseded;
- iv. Decide in the Department for Business, Energy & Industrial Strategy's working Group on the timing of Open Finance/Life as this will have ramifications in terms of legal framework and liability structure.