

**LLOYDS
BANKING
GROUP**



LLOYDS BANKING GROUP PLC

The future oversight of the CMA's open banking remedies

Response to CMA consultation

April 2020

Executive Summary

LBG welcomes the CMA's consultation on the Future of the Open Banking Implementation Entity (OBIE). As the CMA Roadmap is completed (and the Order remains in force) the Entity needs to move to a more sustainable, commercially-led and efficient footing in order to serve the industry's evolving needs. It is the right time now to develop the required governance and to proceed with transition planning.

Background

Lloyds Banking Group has vigorously supported the development of Open Banking infrastructure in support of the CMA's 2016 Final Report. We largely agreed with the central findings and recommendations of the Report: that some customers were not engaging effectively with their personal and small business finances; that this resulted in inertia; that lack of switching activity could make it harder for new entrants to enter and expand in the market.

We agreed that Open Banking could enable data sharing, supporting propositions that could help customers better understand and engage with their personal finances, for example by supporting "aggregator tools" enabling better visibility across multiple institutions, improving credit decisions, and supporting product comparison. We understood that precise outcomes and customer uptake would depend on market dynamics; not all the mooted propositions would come to fruition; while others might emerge that were yet to be identified. We agreed that since market structure was not identified as a competition concern per se, the Open Banking market might deliver customer benefits in a number of ways via larger existing banks as well as challengers and third-parties.

LBG was one of the CMA9 banks that achieved full compliance with both the Open Data release in March 2017, and the Read/Write API release in January 2018. LBG delivered "App-to-app" functionality within three months after the April 2019 deadline. LBG is the stand-out performer as regards the robustness of our API interface, which consistently and comfortably exceeds the OBIE's availability benchmark (Appendix 1).

LBG welcomes the customer benefits that have already arisen from this investment, noting there are 3 million UK Open Banking customers and some hundreds of active Third-Party Providers (**TPPs**). The core functionality is now available to TPPs and customers on a non-discriminatory basis, which typically means at no charge.

The cost of Open Banking has been substantially higher than the CMA or industry participants expected. The CMA's Final Report indicated a cost of £20m for OBIE over two years (including support "in kind"); the net cost of OBIE in cash alone is £148m up to 2020. The Report stated "The incremental cost to firms beyond PSD2-compliance was "likely to be small"; [REDACTED]. The industry was reported to have invested £1.5bn in Open Banking, to the end of

2019. Some of the Open Banking functionality is in regular and routine use; other aspects delivered via OBIE mandate have yet to be used by customers.

Value-for-money

It is not yet clear that Open Banking is delivering value-for-money. Acknowledging that specific cost/benefit analysis is challenging in both fast-moving innovation and central infrastructure, it would now be reasonable for the industry to consider (1) why the cost of Open Banking is “orders-of-magnitude” higher than expected and (2) how future development can be assured of value-for-money, noting that so far the industry development costs have fallen entirely on the CMA9 largest banks.

Now that core infrastructure is in place, the market in Open Banking should be self-sustaining. The expectation should be that future developments can be funded by industry collaboration instead of regulatory mandate. In the event that regulatory mandates are considered, the value-for-money threshold must be much more rigorously applied than hitherto.

Now that the core functionality is in place and the CMA Roadmap is nearing completion, the future of the ecosystem should be placed on a new footing. The mandatory core should (per the FCA’s open consultation) become an industry rather than a CMA9 feature. There is an opportunity and a need for further development to be market-led and self-funding; in order to support both the mandatory element and future development, the Future Entity must become more efficient.

A collaborative ecosystem

The CMA’s consultation says large banks may “have an incentive to slow the further development of the open banking ecosystem”. LBG does not consider this to be the case. We remain committed to (and bound by) the CMA Order. As importantly, we see Open Banking as a channel through which we serve our customers. Currently that channel offers considerable value to TPPs, due to CMA requirements in response to identified market concerns. Future management and development of the ecosystem should offer value-for-money for ASPSPs as well.

The industry needs to learn to work collaboratively in pursuit of commercial solutions that will best serve customers. Now that the core infrastructure is in place, we envisage value-added services that do not require regulatory mandates; in fact reducing the ecosystem’s dependence on regulatory change is essential if commercial imperatives are to flourish. Future regulation should only be considered where there is rigorous cost/benefit analysis and where market-led routes are shown to have failed.

Recommendations

LBG supports the recommendations of the Baringa / UK Finance work, and also we support the CMA’s four framework criteria for a Future Entity 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

We strongly propose a fifth criterion: that the Entity must be highly efficient in order to support both the existing needs of the ecosystem and to deliver any future discretionary or regulatory requirements. If the Entity is not efficient, there is a risk of being unable to respond to market needs, unable to serve new user-groups beyond the finance sector, and unable to help the Open Banking ecosystem direct resources to the benefit of customers.

In order to build on the foundations of Open Banking and best serve the market, the new Entity must be established now with the right governance, accountability to Members, and incentives. The first step is an audit, to support a zero-based review of the OBIE cost base (which was not possible during the Baringa project). The completion of the CMA Roadmap is the right time to place the Entity on a solid foundation.

Responses to questions

Governance and funding

(a) It is envisaged by UK Finance that the Members of the Future Entity would appoint the Chair with “votes weighted by participant type.” This process is not explained in detail and we will seek further clarity from UK Finance. However, it may give rise to a risk that a particular stakeholder group (eg the largest banks) would have an inappropriate degree of influence over the appointment. What process and criteria should be used to identify suitable candidates for the Chair? Who would be responsible for doing this, who should be kept informed and whose approval should be sought for decisions at this stage? Should the Members alone approve and appoint the Chair or should the CMA’s approval be required, as was the case in the appointment of the Trustee?

Members should approve and appoint the Chair, with an open and transparent recruitment process. All members (not just ASPSPs) should be able to nominate candidates for consideration, and those candidates should be reviewed based on their ability to deliver the criteria outlined for the new Entity.

Before appointing the Chair, the industry needs clear definition of the Entity’s criteria and objectives, and the powers to deliver those objectives. The Chair will need to demonstrate how they will deliver those objectives.

(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?

LBG agrees with the balanced representation of ASPSPs and TPPs on the Board.

(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 is accountable to Members, and to end-users via the Members. The Future Entity should establish fully transparent financial and operational reporting, supporting improved accountability as befits a multi-million pound organisation entering "business-as-usual" mode. The report rightly indicates that the Board should financially account, in detail, to those paying the fees.

The independence of the Board is important to its ability to serve the market. The Board should ensure all decisions are underpinned by cost/benefit analysis.

The FCA will naturally take an interest in the future Entity, since all Members are FCA-regulated. However we believe the independence of the Board is best assured by the presence of customer and independent representatives.

(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 Chair can count upon full support of ASPSPs in the efficient discharge of obligations under PSD2 and the CMA Order. Those requirements remain in place and are not under any threat.

The future entity should then primarily be developing capabilities that the market wants. Where there is a market need, there should not be a challenge gaining support and resource whether from ASPSPs or TPPs.

(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?

LBG supports the UK Finance proposals

Adequate resourcing to perform the functions required

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?

LBG will continue to support the CMA's Open Banking remedy as outlined in the Final Report and the CMA Order. The Remedy is already effective in creating an ecosystem that is serving the needs of 3 million customers using some hundreds of TPPs, helping them to share data and manage their finances.

As well as serving the CMA Order effectively, the new Entity can (given the appropriate governance) serve ASPSPs efficiently.

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?

The CMA9 remain bound by the CMA Order to pay for industry infrastructure to "run" the ecosystem.

Requests for future development from Members to "change" the ecosystem should be self-funding by default. Propositions that are in customers' interests can support collaborative engagement. The future Entity should be a venue within which to resolve e.g., free-rider concerns between participants, so that those wishing to use a service or proposition are able to participate and pay for the service on a reasonable basis, and also to prioritise requirements based on the level of support from Members.

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?

As long as the principle remains under PSD2 that payments are available on a non-discriminatory basis, and without obstacles in the form of "negative friction", TPPs cannot be made to pay for payment rails.

TPPs and merchants should be able and encouraged to consider how to add value on top of payment rails, e.g., enhancing customer protection and developing the customer experience. OBIE should encourage investment by TPPs in value-adding developments.

Separately, the PSR should be encouraged to consider whether basic payment services are in the best interests of customers. LBG's view is that customers will expect some measures of customer protection and that it is reasonable for TPPs and/or merchants to pay for them.

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?

Yes. The Chair and Board should ensure the Future Entity remains the most effective and efficient way for ASPSPs to comply with the CMA Order and PSD2. If it is not efficient, ASPSPs should have the freedom to go elsewhere, but will face considerable start-up hurdles in doing so e.g., building a new Directory. The greater risk is that opportunities to streamline delivery are missed

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?

LBG supports the UK Finance proposals

Representation 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 welcome the establishment of a Board position for a representative of the end-customer. In addition to the fiduciary and operational responsibilities of a Board member, this person can act as the Future Entity's conscience. This person should be able to raise a flag against any propositions and developments that run counter to customers' interests, and particularly where propositions may favour certain customers while raising the risk of harm to other customers. It is reasonable to expect the Board to identify, account for and manage those risks whether within its own purview or in conjunction with other institutions.

In our view, however, customers' interests are generally well-represented by commercial firms, with development that is led by the market. The customer has several representatives on the Board in the form of TPPs and ASPSPs. It should be for market participants to bring propositions to the future Entity for consideration.

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

Yes, just as ASPSPs and TPPs may represent various combinations of customer segments across consumer and business

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?

The customer representatives should be people with a track record and knowledge of customers, including vulnerable and less well-off groups. LBG does not have strong views about how to appoint the right person or people.

Sustainability / 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?

The proposal sees the CMA9 commit to a 3-year term of membership which LBG believes is sufficient and necessary. This takes Open Banking's Future Entity to 2024.

Beyond this period, CMA9 and other banks wishing to "switch" away from the Future Entity will face considerable barriers in doing so. CMA9 banks will remain bound by the CMA Order and PSD2; in the event of "exit" from the Future Entity, those CMA9 banks will need individually or collectively to procure substitute services, from a new

provider, that make an Open Banking channel available on a non-discriminatory basis. Apart from the regulatory imperative, we anticipate an increasing customer imperative – with an increasing number of customers who want to use Open Banking and will expect the service to continue to run. If the future Entity is operating effectively and efficiently, it is highly unlikely that CMA9 or other ASPSPs would wish to exit.

We understand the CMA must manage risks to the Open Banking ecosystem. However we have highlighted the importance of an Entity that delivers value-for-money to ASPSPs as well as TPPs – there is also risk of an Entity that is able to force ever-increasing cost into the ecosystem without fear of losing contributing Members. The 3-year tie in, with exit options that nonetheless face considerable barriers, is an appropriate balance between these two risks. The alternative is to bind ASPSPs to pay indefinitely for something they do not control.

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?

LBG generally supports the FCA’s proposal, currently under consultation, to require most ASPSPs to adopt APIs for payment accounts. This will ensure smaller ASPSPs have clear incentive to participate in Open Banking, especially in presence of larger ASPSPs sharing bills on a proportionate basis. ASPSPs not using Open Banking infrastructure should be free to procure e.g. Directory services, as long as this fulfils the requirement for obstacle-free TPP access.

LBG would welcome a transition to a more proportionate financial contribution from non-CMA9 ASPSPs, however this is not a Day 1 priority for the new Entity. The Entity should first transition to the “right-size” and then the case for other ASPSPs to participate (and pay) would make itself.

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 Entity will be a centre of expertise on the Open Banking ecosystem and will be well-placed (at minimal incremental cost) to facilitate pan-industry and regulatory discussions

Emerging regulatory mandates should be managed case-by-case and subject to rigorous cost/benefit analysis. It is important that firms subject to such mandates, as regards data-sharing and APIs, should consider the Entity an effective and efficient means to help deliver them.

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?

The UK's Payment Systems Regulator should oversee payment systems. Open Banking's role, and the Future Entity, is to support PISP functionality via API on a non-discriminatory basis.

Open Banking, and the Future Entity, are not the right venues to drive innovation in Payments.

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?

LBG supports the UK Finance proposals

Monitoring Arrangements

(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?

(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?

(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?

(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.

(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?

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

LBG supports the UK Finance proposal to place monitoring of the CMA Order with the FCA; advantages being efficiency, consistency, and broader industry awareness. We agree with the CMA that the Future Entity should not be monitoring its members.

The FCA is the UK's authority to enforce PSD2, which has considerable overlap with the CMA Order. Per our submissions to the Trustee and the CMA, the MI tools already in place are sufficient to monitor and enforce the API performance of CMA9. Those tools can be placed with the FCA; the FCA may have a view whether to extend these performance, availability and MI requirements beyond CMA9. In any case, the monitoring arrangements should be proportionate to the requirement to maintain / raise standards.

Transitional arrangements – design considerations

(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?

The UKF proposal does not require a wholesale transformation. We believe the risks lie not with the transition but with the need to right-size the organisation, which will be the responsibility of the new Chair.

(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?

The monitoring of the ecosystem can be transferred to its new home independently of the transition state of the Entity

LBG has supported the movement of monitoring to the FCA; the FCA may wish to set up for parallel delivery of MI and parallel discussions for a short time

(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?

The appointment of the new Chair is a priority; that person's job is to prepare for transition

CMA9 are required to ensure continuity of critical services in order to fulfil our CMA Order requirements; we have a strong interest in ensuring continuity of Open Banking services

(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?

The two Roadmap items with potential for significant CMA9 implementation, yet to be closed, are Management Information and VRP/Sweeping.

Per our recent letter to the CMA, the proposed real-time MI offers no benefit to the ecosystem at considerable expense. We believe the existing MI is entirely sufficient to enable monitoring and enforcement of PSD2 and the CMA Order; we do not believe the proposal for real-time MI can have any impact on either fixing issues tactically (as they arise) or strategically (to prevent them arising). We would encourage the closure of this Roadmap item.

Where there are issues of performance they should be tackled on a targeted and bilateral basis. Specifically, the tools chosen by regulators to monitor performance should be proportionate to the need; where there is clear evidence of consistently strong performance, the requirement for MI to support monitoring is likely to be substantially lower. Where there are recurring issues, the regulator can direct an uplift in performance and, if necessary, require a "skilled person" to address performance – including producing whatever MI is necessary to support the firm in question.

OBIE should proceed with a technical standard for VRP. The consultation process has shown that the ecosystem is not prepared for mandatory VRP and that mandatory VRP for sweeping is not proportionate; rather, payments innovation should be left with the Payment Systems Regulator.

(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?

The future Entity should have the flexibility both to run existing requirements and to introduce developments required by the market or by regulators (on a case-by-case basis with clear cost-benefit analysis)

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

In principle, LBG has no concerns about transition arrangements and looks forward to building on the Baringa plans.

Our response is subject to due diligence and the audit as requested by a CMA9 member. Proper financial and operating disclosures from OBIE will enable the future Chair to “colour-in” much of the detail, and should set a precedent for transparency and accountability in future.

Appendix 1: ASPSP performance through 2020

ASPSP	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Average Availability %
Bank of Scotland	99.91%	99.90%	100.00%	99.88%	99.90%	99.68%	99.87%	99.94%	100.00%	100.00%	99.82%	99.85%	99.90%
Lloyds Bank	99.79%	99.81%	99.93%	99.88%	99.98%	99.74%	99.87%	99.90%	99.98%	99.98%	99.89%	99.93%	99.89%
Halifax	99.62%	99.72%	99.91%	99.87%	99.99%	99.62%	99.96%	99.60%	99.99%	99.99%	99.95%	99.94%	99.85%
MBNA	99.80%	99.64%	99.83%	99.89%	99.80%	99.54%	99.85%	99.53%	99.99%	99.99%	100.00%	100.00%	99.82%
NatWest	99.39%	99.97%	99.64%	99.82%	99.40%	99.98%	99.97%	100.00%	99.24%	99.18%	99.84%	99.46%	99.66%
UBN	99.36%	99.86%	99.69%	99.82%	99.39%	100.00%	99.96%	99.97%	99.25%	99.16%	99.92%	99.44%	99.65%
HSBC	99.38%	99.97%	99.57%	98.32%	99.34%	99.71%	99.91%	99.85%	99.97%	-	99.96%	-	99.60%
Allied Irish Bank	100.00%	100.00%	100.00%	100.00%	98.72%	100.00%	98.92%	97.43%	99.86%	99.86%	100.00%	100.00%	99.57%
Santander	98.72%	98.23%	99.73%	99.73%	99.89%	99.82%	99.49%	99.24%	99.87%	99.87%	99.53%	99.53%	99.47%
Nationwide	99.96%	99.13%	98.40%	99.05%	99.97%	99.94%	99.28%	99.92%	99.26%	99.14%	99.12%	99.45%	99.39%
Barclays	99.16%	98.49%	96.27%	99.31%	99.27%	99.92%	99.92%	100.00%	99.44%	99.44%	100.00%	99.83%	99.25%
Danske Bank	98.94%	99.75%	98.84%	99.95%	99.97%	99.77%	97.88%	98.99%	99.22%	99.22%	97.52%	97.05%	98.93%
Cater Allen	-	-	-	-	98.12%	100.00%	100.00%	98.39%	98.13%	98.13%	99.17%	93.55%	98.19%
Bank of Ireland	91.44%	100.00%	97.98%	99.24%	99.60%	97.92%	95.30%	92.98%	95.56%	95.56%	96.47%	95.45%	96.46%