

To whom it may concern,

APPG Open Banking and Payments response to the CMA consultation on the future arrangements for the Open Banking Implementation Entity (OBIE)

Ahead of addressing the three areas that the CMA is seeking feedback on we note that the CMA published its consultation on 5th March 2021 with a consultation closure date of 29th March 2021.

For a consultation that is critical to how the UK progresses its global lead in Open Banking and ensures it evolves to encompass Open Finance and other sectors through Smart Data, only allowing three weeks for responses feels very short and does not allow member organisations to fully canvas the views of members.

We also note that although the CMA sets out its 4 assessment criteria, for the successor organisation's governance and funding, the consultation does not propose a range of options for consideration. The sole focus on gaining feedback on UK Finance's proposal does therefore feel very narrow and might be interpreted as wanting the successor organisation to only represent the views of the UK's largest commercial banks – the same 9 banks the CMA set up the Open Banking Implementation Entity (OBIE) to be independent from, so it could, through Open Banking, enable innovation and competition in the UK banking market.

It is this OBIE independence of both governance and funding that we believe has enabled the UK to establish itself as the global leader in Open Banking; and it is maintaining this independence that will enable the next stage of this UK competition and innovation journey to be equally successful.

Also key for the next stage of the UK's competition and innovation journey will be for the successor organisation to act as the springboard into finance (Open Finance) and other sectors (Smart Data). If we compare ourselves to other countries, for example Australia, they have set this vision as their target for Open Banking as their first step.

For the UK therefore it would be remiss if the governance or funding of the successor organisation restricted the UK in achieving this bigger 'open' vision. Making it wedded to any degree to the thinking or pace of the CMA9 banks would only restrict our 'open' vision to Open Banking, as opposed to Open Finance and Smart Data.

Specifically, on the three main areas you have requested feedback on during the short three-week consultation period we would ask that you consider the following points:

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?

Against the 4 criteria that the CMA has set out, namely

- 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 do not believe that the UK Finance proposals meet all of these criteria.

The UK Finance proposals, in particular the funding model, do not provide the supportive independent funding base that the successor organisation would need and more importantly it would leave the successor organisation not adequately resourced and/or unable to plan for the long term. Furthermore, the proposed 3-year short term (reducing year on year) funding model would leave it weakened and unable to think strategically with a long-term lens because of the funding cliff at year 3.

The CMA also rightly highlights the risk of undue influence in the appointment of the Chair. This raises a wider concern that the UK Finance proposal could see the successor organisation not being able to move towards Open Finance and Smart Data because its governance model is too “banking focused”.

As such we believe the governance of the successor organisation needs to include a wider set of stakeholders with oversight of strategic direction or meeting targets, to the CMA or a similar regulatory type of authority.

The CMA should also look at other funding models which support the strategic vision as opposed to the proposed UK Finance funding model which seems to have a singular focus on reducing the CMA9 banks funding commitments as quickly as possible.

One potential funding model that should be investigated in more detail is funding as a part of the FCA levy. This would allow it to be proportionate to company size and also allow funding to expand into other sectors and support the evolution of Open Banking towards Open Finance and Smart Data.

Although the detail needs to be worked through this type of funding model would enable avoidance of both the ‘free riding’ and CMA9 funding reducing too quickly as highlighted by the CMA.

The Consultation also asks about sustainability and adaptability. The CMA considers this in the context of one or more of the CMA9 withdrawing from the future entity. We consider the CMA order as being independent of the future entity and if the future entity is funded as part of the FCA levy or similar funding mechanism then this will both ensure sustainability and enable adaptability into other ‘open’ projects such as Open Finance and what we believe should be a greater independent monitoring and enforcement role. Ensuring API availability and performance across the ‘open’ ecosystem.

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

As proposed by UK Finance the future monitoring would need to be independent. However, if the future entity was independent with independent funding via the FCA levy or similar then

an independent future entity could have responsibility for an independent monitoring function that monitors and enforces API availability and performance. This would also allow the independent future entity to evolve its monitoring and enforcement capabilities for other sectors as the 'open' ecosystem expands beyond Open Banking.

As the CMA has identified the key principle for the monitoring (and enforcement) function is independence from the organisations it is monitoring. However, looking to the future, monitoring and enforcement will need to expand from the current 'bilateral meeting' monitoring that exists today to encompass technical monitoring of API interfaces to ensure that their availability and performance meets the agreed requirements of an 'open' banking, finance or smart data ecosystem. In a connected world, looking to embrace innovation and competition, the availability and performance of one party should not be allowed to restrict or slow innovation or competition.

As the UK looks to wider 'open' projects this timeliness of connectivity and response will therefore be crucial in supporting innovation and competition and building trust. Unfortunately, the CMA's consultation on the future entity does not consider this point nor is it something that the UK Finance proposal contemplates. This is a pity as it will be critical that the future entity is both fully independent and encompasses a robust monitoring as well as a significant dispute resolution capability.

We therefore encourage the CMA to widen its consultation remit to look at the needs of the 'open' ecosystem more closely and to ensure that the 'market failure' focus of the future entity fully encompasses API availability and performance.


What transitional arrangements should be adopted and when should the process begin?

Until the governance and funding of the future entity is agreed and where the monitoring function should sit it is difficult to comment on current to future transitional arrangements.

A wider discussion on the future entity would be welcome, a discussion that could then also consider transitional arrangements.

We hope this feedback is helpful and we would be happy to support a meeting for the CMA to discuss these issues with the APPG's membership.

Yours,

A large black rectangular box redacting the signature of Ian Liddell-Grainger.

Ian Liddell-Grainger MP
Chair, APPG on Open Banking and Payments