

# The future oversight of the CMA's Open Banking remedies

Response to consultation

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## Summary

1. Open Banking enables consumers and small and businesses to share their data securely with trusted third parties who are then able to provide them with applications and services which save time and money. It also enables consumers and businesses to initiate payments directly from their payment accounts to another bank account held by the payee without the use of cards. This has been achieved through the development and implementation of open application programming interface (API) banking standards.
2. Open Banking was initiated in 2017 as part of a package of remedies by the Competition and Markets Authority (CMA) following a market investigation into retail banking services (the Market Investigation). The CMA ordered the nine largest current account providers in Great Britain and Northern Ireland (referred to as ‘the CMA9’) to create and pay for an Open Banking implementation Entity (OBIE) to agree, consult upon, implement, maintain and make widely available, without charge, open and common banking standards (the Open Banking remedy).<sup>1</sup>
3. Open Banking has been a major success in improving competition in retail banking and securing positive outcomes for consumers and businesses. The United Kingdom (UK) pioneered the adoption of Open Banking globally and this initiative has, in the words of John Glen, Economic Secretary to the Treasury, ‘taken the world by storm’<sup>2</sup> with around 30 other jurisdictions now following the UK’s lead. As at January 2022, there were over five million users of services powered by Open Banking technology.<sup>3</sup> There are already a wide range of Open Banking applications – from buying a car<sup>4</sup> to paying taxes,<sup>5</sup> and new services have started to be developed to support less well-off consumers.<sup>6</sup>
4. The Open Banking remedy is governed by the Retail Banking Market Investigation Order 2017 (the [Order](#)). The implementation phase of the Open Banking remedy is anticipated to come to an end later this year when the core elements of the Open Banking remedy implementation timetable (the

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<sup>1</sup> OBIE was established by the CMA9 as a limited company, Open Banking Limited (OBL).

<sup>2</sup> Foreword to the [Kalifa Review of UK Fintech](#).

<sup>3</sup> [Open Banking press release](#), January 2022.

<sup>4</sup> For example, [Cazoo now uses Open Banking payment services](#).

<sup>5</sup> HMRC has taken over £1billion in tax through Open Banking since enabling the collection of tax payments in this way, [Global Government Fintech, 29 September 2021](#).

<sup>6</sup> For example those with a thin credit file or adverse credit history (for example, [Signal, from Credit Kudos](#)), or to assist carers in identifying unusual spending patterns (for example, [Kalgera](#))

[Roadmap](#)) are deemed to be complete by the CMA.<sup>7</sup> At this point, the nature and scope of the obligations under the Order will change. There are a number of requirements under the Order which will continue following implementation of the core elements of the Roadmap and which the CMA<sup>9</sup> will be required to fund until the establishment of a long-term funding model for Open Banking (see paragraphs 28 to 30). These include monitoring of existing standards' conformance, performance and availability, and enforcement where necessary; maintenance of the standards; maintenance of the Directory;<sup>8</sup> and making the standards widely available through reasonable promotion of Open Banking in the retail banking markets, including support for industry adoption.<sup>9</sup> The CMA will oversee these requirements until such time as it considers it may be appropriate to review whether these requirements are still necessary in light of the relevant market circumstances and, in particular, the wider regulatory environment. The CMA envisages this may be alongside establishing a Future Entity and once there is greater clarity over the nature and scope of any long-term regulatory framework for Open Banking (see paragraphs 14 to 18).

5. Following implementation of the core elements of the Roadmap, the CMA will also be responsible for providing consent to the transition from OBIE to a Future Entity that will be responsible for developing Open Banking beyond the scope of the Order and fulfilling those requirements under the Order which will continue following implementation of the Roadmap.<sup>10</sup> OBIE will be responsible for overseeing (a) the preparation, planning and execution of transition; and (b) once transition has been completed, the solvent winding-down of any residual functions of OBIE (if the operations, staff and assets of OBIE are transferred to a new organisation).<sup>11</sup> In preparing for transition, we would expect OBIE to engage with the CMA and the Joint Regulatory Oversight Committee, which will be established by Government, the CMA, the Financial Conduct Authority (FCA) and the Payment Systems Regulator (PSR) to oversee the development of Open Banking beyond the scope of the Order (see paragraph 15). The implementation of transition will only commence

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<sup>7</sup> On 23 March 2022, the CMA published a [letter](#) to the Implementation Trustee regarding the current status of the Roadmap.

<sup>8</sup> The Directory is the whitelisting system required by the Order as part of the data standard (article 10.2.3(c)) for approving providers fairly and quickly. The Directory is operated by OBIE. On enrolment to the Directory, parties are able to connect with account providers and offer Open Banking services.

<sup>9</sup> The ongoing requirements under the Order relate only to those standards developed pursuant to the Order and does not capture any future standards that may be developed by the Future Entity.

<sup>10</sup> Our preference is for the Future Entity to take on responsibility for those requirements under the Order which will continue following completion of the implementation phase of the Open Banking remedy. However, the CMA will consider alternative arrangements for the continuing requirements under the Order to the extent appropriate or necessary, including on the basis of the funding and governance arrangements of the Future Entity.

<sup>11</sup> As set out in paragraph 18 of the [Agreed Arrangements](#).

upon consent of the CMA, once it is satisfied that adequate preparations for transition have been made and that Open Banking will transition to a financially stable and well governed body. The CMA's focus in providing consent will be on the capability of the Future Entity to fulfil the continuing requirements under the Order, although the CMA will also have regard to whether the Future Entity is able to take on broader functions. In determining whether the Future Entity will be capable of assuming these broader functions, the CMA will work jointly with the Joint Regulatory Oversight Committee.

6. The CMA cannot, however, require the CMA9, whether directly or through OBIE or any Future Entity, to take action to develop Open Banking beyond the scope of the Order or expand its application to markets or financial services sectors beyond retail banking. Neither the CMA's Market Investigation [Final Report](#) nor the Order set out explicitly what arrangements should be put in place following implementation of the Order. However, paragraph 17 of Part A of Schedule 1 of the [Explanatory Note to the Order](#) anticipates the 'need to ensure that open banking standards and governance processes are maintained beyond the implementation of the last stage of the CMA remedies in January 2018<sup>12</sup> and are consistent with the adoption of open API standards in other sectors of the financial services market, for example mortgages'. Paragraph 39 further states that 'once the Read-only Data Standard and Read/Write Data Standard are adopted there may be merit in either (i) expanding the scope of the Implementation Entity or (ii) creating a new industry body, or working with an existing one, to oversee the structure and development of APIs'. This section of the Explanatory Note concludes 'Ultimately the CMA, while wishing to ensure the remedy remains effective, would welcome these bodies and the industry taking ownership of these issues and it may be appropriate at that stage to agree different arrangements (for example with different funding and governance structures) or it might be appropriate for the CMA to review whether parts of the Order should be amended or can be revoked because they have been superseded by longer-term arrangements'.
7. The CMA considers that Open Banking has significant transformative potential for the wider UK economy as it continues to develop in the future. In particular, there may be wider potential benefits in applying Open Banking beyond retail banking, including driving competition in payments and the

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<sup>12</sup> The original date scheduled, subsequently extended as a result of changes to the Roadmap proposed by the Implementation Trustee and approved by the CMA.

broader financial sector through Open Finance.<sup>13</sup> Therefore, the CMA considers that future arrangements for Open Banking must be put in place to secure this aim and that the Future Entity should have a central role in developing Open Banking beyond the scope of the Order.

8. On 5 March 2021, the CMA launched a [public consultation](#) on the future oversight of the Open Banking remedies. This sought stakeholder views on what arrangements should be put in place to ensure the effective oversight and governance of Open Banking following the delivery of the implementation requirements of the Order and how the CMA should manage the transition process towards this new governance model. There were over 60 written responses to this consultation from a wide range of stakeholders.
9. The CMA carefully considered the responses to this consultation and decided that before setting out next steps it would also be appropriate to await the outcome of an independent investigation into issues that had been raised by a complaint which set out, among other things, a number of allegations relating to OBIE and its former leadership. On 1 October 2021, the CMA published an independent report by Alison White (the [Independent Report](#)). The Independent Report concluded that OBIE had not been properly managed and a lack of appropriate corporate governance was a direct contributor.
10. We have considered what can be learned from the design of OBIE, as well as all the evidence provided to us by stakeholders and the findings of the Independent Report, in setting out our views on the appropriate arrangements for the future oversight of Open Banking. In addition, Kirstin Baker, an independent non-executive Director of the CMA, was appointed in November 2021 to lead a [review](#) into Open Banking to identify the lessons for the CMA in its approach to designing, implementing and monitoring remedies in its market investigations. The review is expected to be completed within six months of launch and its findings reported to the CMA Board and published. We will consider the implications of the findings of the review for the future governance of Open Banking once the findings are published later this year.
11. In our view, the Future Entity should:
  - (a) have effective regulatory oversight;
  - (b) have a clear purpose;

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<sup>13</sup> Open Finance refers to the extension of Open Banking-like data sharing and third-party access to a wider range of financial sectors and products, with explicit consumer consent (such as savings, mortgages, consumer credit, investments, pensions, and insurance).

- (c) have independent and accountable leadership, appropriately take into account the interests of all key stakeholders and adhere to best practice corporate governance principles;
  - (d) be adequately resourced to carry out its functions;
  - (e) effectively serve the interests of consumers and small and medium sized enterprises (SMEs);
  - (f) be sustainable and adaptable to the future needs of the ecosystem; and
  - (g) be able to support an appropriate monitoring function to enable effective ongoing monitoring and enforcement of the Order. The Future Entity should also consider undertaking wider monitoring of the ecosystem.
12. In our view, there must also be appropriate arrangements in place to ensure a smooth transition from OBIE to the Future Entity.
  13. In this document, we set out our recommendations for the future governance of Open Banking. While the CMA will be responsible for the continuing requirements under the Order following the completion of the implementation phase of the Open Banking remedy, it will be for the Future Entity, overseen by the Joint Regulatory Oversight Committee and in consultation with industry and other key stakeholders, to define and agree a vision to secure the future of Open Banking and determine the appropriate governance arrangements to help achieve this vision.

### ***Regulatory oversight***

14. We consider that the role of the CMA in overseeing the activities of OBIE has been vital in progressing the Open Banking remedy to its current position. Therefore, our view is that the Future Entity should continue to be subject to effective regulatory scrutiny to ensure that it acts in a fair and independent manner to benefit consumers, businesses, and the wider economy. This regulatory oversight will not be led by the CMA.
15. There will be an interim period between the completion of the implementation phase of the Open Banking remedy and the establishment of a long-term regulatory framework for Open Banking. To ensure that the Future Entity is subject to appropriate regulatory oversight during this interim period, we have published a joint statement with Government, the FCA and the PSR to set out



our plan to establish a Joint Regulatory Oversight Committee to oversee the development of Open Banking beyond the scope of the Order.<sup>14</sup>

16. We consider that for the full potential of Open Banking to be realised, its development cannot be left entirely to the industry, as the commercial incentives of key industry participants are unlikely to be perfectly aligned with those that would maximise the benefits to customers and businesses. This raises the serious risk that, in the absence of robust regulatory oversight, certain organisations or groups may seek to deflect or subvert the future trajectory of Open Banking for their own commercial benefits. For example, existing incumbents may have incentives to try and limit the growth of Open Banking by not sharing data above and beyond the existing requirements, in order to protect their existing advantages.
17. Open Banking in the UK has led to more successful outcomes than Open Banking in some other jurisdictions and past initiatives in the retail banking sector in the UK. This is because formal regulatory powers were put in place to compel the CMA9 to establish and fund OBIE and OBIE has the expertise necessary to understand the technical challenges involved in developing Open Banking and to work with the CMA9 and other industry participants to ensure that the measures are fully implemented. In addition, Open Banking in the UK and across the European Union (EU) has benefited from a comprehensive regulatory framework, compelling account providers to provide access to customer accounts (with the customer's explicit consent) to third party providers (TPPs),<sup>15</sup> under the oversight of the FCA in the UK.<sup>16</sup>
18. We think that the future oversight of Open Banking should be jointly led by the FCA and the PSR. The FCA authorises, regulates and supervises Open Banking and payment firms, including through its role as competent authority for the Payment Services Regulations 2017. The PSR is the economic regulator for payment systems. The CMA will continue to oversee Order-related activities until the establishment of a long-term regulatory framework for Open Banking. We consider that Government may need to bring forward legislation to provide the FCA and the PSR with additional formal powers they may require to enable them to effectively oversee the Future Entity. The joint

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<sup>14</sup> [Further information on the Joint Regulatory Oversight Committee is provided in the joint statement.](#)

<sup>15</sup> TPPs provide Open Banking services.

<sup>16</sup> The Payment Services Regulations 2017 implement PSD2 in the UK and require all payment services providers to enable data sharing by customers but, unlike the Order which applies just to the CMA9, do not stipulate the use of common and open API standards. Most banks and building societies providing current accounts have adopted the open banking standards in order to comply with the Payment Services Regulations 2017.

statement sets out the Government's intention to work with the FCA and PSR to assess where any additional formal powers may be required.

### ***Purpose of Future Entity***

19. As set out in paragraph 4, we consider that the Future Entity should develop Open Banking beyond the scope of the Order and support the monitoring and enforcement of those requirements under the Order which will continue following completion of the Roadmap.
20. In our view, the Board of the Future Entity, overseen by the Joint Regulatory Oversight Committee, should articulate a clear purpose for the Future Entity which encompasses its central role in:
  - (a) providing, maintaining and updating common standards, core infrastructure and critical services to support the day-to-day running of Open Banking;
  - (b) providing a platform for UK financial institutions to meet their existing regulatory requirements (ie existing obligations under the Order and Payment Services Regulations 2017)<sup>17</sup> and any future regulatory requirements relating to Open Banking;
  - (c) playing a central role in the further development and growth of Open Banking and considering new capabilities and functions to support the continued growth of open API propositions in the interests of all end-users and industry participants;
  - (d) supporting competition and innovation in the UK payments market by continuing to support the development of an alternative to traditional retail payment methods (eg building on OBIE's work on the development of a [Confirmation of Payee](#) API specification); and
  - (e) supporting the UK's leadership in Open Banking by responding and adapting to future developments and taking on international projects.

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<sup>17</sup> Payment Services Regulations 2017 largely implement PSD2 is a European Union (EU) Directive which sets requirements for firms that provide payment services. PSR 2017 require all payment services providers to enable data sharing by customers but, unlike the Order which applies just to the CMA9, do not stipulate the use of common and open API standards. Most banks and building societies providing current accounts have adopted the open banking standards in order to comply with the Payment Services Regulations 2017.

21. The purpose of the Future Entity should be underpinned by a set of values and cultures which include an emphasis on integrity and promoting ethical behaviours.
22. To achieve this purpose, the Future Entity should consider setting easily identifiable and measurable outcomes within the following areas:
  - (a) An efficient, secure and reliable service.
  - (b) Widespread adoption of Open Banking propositions.
  - (c) Increased competition and innovation in retail banking and payments.
  - (d) Positive consumer and SME outcomes, including for consumers in vulnerable circumstances.
  - (e) The UK's continued leadership in Open Banking.
23. In determining appropriate outcomes, the Future Entity should take into account:
  - (a) the needs of consumers and SMEs;
  - (b) the interests of other key stakeholders, including Account Servicing Payment Service Providers (ASPSPs),<sup>18</sup> TPPs, other financial institutions subject to the Payment Services Regulations 2017 and financial institutions outside of retail banking (as the Open Banking model is extended to other financial services products);
  - (c) the importance of data security and reliability; and
  - (d) the need to advocate for Open Banking and payments propositions in the UK and internationally.

### ***Independent and accountable leadership***

24. While the precise composition of, and governance arrangements for, the Board of the Future Entity will be overseen by the Joint Regulatory Oversight Committee, our view is that the Board should be majority independent, broadly based and representative of the range of stakeholder interests. This would avoid the risk of any one stakeholder group having undue influence

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<sup>18</sup> ASPSPs provide and maintain a payment account for a payer as defined by the Payment Services Regulations 2017 and, in the context of the Open Banking Ecosystem, publish Read/Write APIs to permit, with customer consent, payments initiated by third party providers and/or make their customers' account transaction data available to third party providers via their API end points.

over the strategy and direction of the Future Entity and will also ensure that the Future Entity has access to the necessary technical expertise. We consider that the Board should be representative of key stakeholders, including end users, and this should be reflected in the roles and composition of the Board.

25. The Future Entity should have a Chair and a CEO. To avoid conflicts of interest and to provide effective leadership, we consider that each of these roles should be fulfilled by a different person and there should be a clearly specified delineation of responsibilities for these roles. The Chair should be responsible for leading the Board (including ensuring robust governance structures exist and are regularly reviewed) and ensuring that the Board sets the strategic direction of the Future Entity. The CEO should be responsible for ensuring the Future Entity delivers the strategy and for day-to-day management, including all existing and future activities that it performs.
26. The Future Entity should adhere to high standards of corporate governance in line with the UK Corporate Governance Code. The Future Entity should establish appropriate risk management and internal control processes, adopt appropriate committee structures, including audit, risk, nomination and remuneration committees, and design and implement an appropriate suite of policies to address issues, such as conflicts of interest; procurement; remuneration; recruitment; diversity and inclusion; equalities; whistleblowing; discipline; grievance and management of complaints. The Board should also conduct an annual review of its own effectiveness.
27. To ensure effective regulatory oversight until a long-term regulatory framework for Open Banking is established, the Joint Regulatory Oversight Committee should consider whether the:
  - (a) appointment of the first Chair of the Future Entity, and any subsequent appointment, should be subject to approval by the Joint Regulatory Oversight Committee;
  - (b) CMA, the FCA and the PSR should attend Board meetings as observers; and
  - (c) Board of the Future Entity should provide regular and transparent reporting to the Joint Regulatory Oversight Committee.

### ***Adequate resourcing***

28. The Order applies to the CMA9 and requires them to set up and fund OBIE. The CMA9 will also be required to fund the costs related to the ongoing

requirements under the Order following the completion of the implementation phase of the Open Banking remedy (see paragraph 4).

29. As Open Banking develops beyond the scope of the Order, there is a risk that if the CMA9 are the main committed funders of the Future Entity, even if only in its early years, they may assume a position of greater influence over the Future Entity. However, we are also mindful that if the Future Entity does not have access to the funds needed to implement the plans agreed by the Board and the Joint Regulatory Oversight Committee, the Future Entity may be unable to fulfil its purpose.
30. We recommend that the current funding arrangements for OBIE should remain in place for the Future Entity in its discharge of functions beyond the scope of the Order until a long-term funding model has been agreed by the Board of the Future Entity and the Joint Regulatory Oversight Committee. We note that UK Finance<sup>19</sup> proposed that the annual funding requirements should be covered proportionally by member ASPSPs. We expect the Board of the Future Entity to design and implement a more broadly-based and sustainable funding model, engaging closely with the Joint Regulatory Oversight Committee. We consider that there are many different funding models available that may be appropriate for the long-term development of Open Banking. In determining an appropriate long-term funding model, the Board of the Future Entity should consider the implications of this, if any, for Board composition, consulting appropriately with all relevant stakeholders.
31. We consider it important that the Future Entity is fully transparent regarding its financial information and expenditure, as this will promote confidence and respect as well as building support for the transition towards a more sustainable funding model. In our view, the Future Entity should have appropriate systems of financial reporting and control and may also benefit from additional reporting mechanisms.

### ***Representation of consumers and SMEs***

32. The Board of the Future Entity should be independent from undue influence by any group of stakeholders and representative of end users. This should be reflected in the roles and composition of the Board, in order to ensure that it acts in the best interests of end users.
33. The Joint Regulatory Oversight Committee should consider how consumers and SMEs are effectively represented on the Board and in any other parts of

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<sup>19</sup> UK Finance is a trade association for the UK banking and financial services sector.

the governance structure. Further, any consumer and SME representative should be provided with sufficient resources to enable them to fully capture the views of their respective communities and represent them at all levels of governance. Subject to approval by the Joint Regulatory Oversight Committee, the Future Entity may also choose to adopt any existing tools or fora within the current governance framework for OBIE that have proved effective in representing end users, such as the Consumer Evaluation Framework and the End User Risk Committee.

### ***Sustainability and adaptability***

34. In our view, the move towards a broadly-based and sustainable funding model (see paragraph 30) will help to secure the long-term future of Open Banking and will also ensure that all participants contribute appropriately to reflect the benefits generated by the Future Entity. Further, the CMA9 will have continuing obligations under the Order (see paragraph 4) which will necessitate their ongoing engagement with (and funding of) these aspects of the Future Entity until the establishment of a long-term regulatory framework for Open Banking.

### ***Monitoring***

35. The Order provides for the CMA to carry out monitoring of compliance with the ongoing requirements of the Order, including information gathering mechanisms, the ability to issue directions with regard to Order-related activities, and a requirement for the CMA9 to provide compliance statements to the CMA. The CMA is able to seek enforcement of the ongoing requirements of the Order through issuing directions and ultimately launching court proceedings. Throughout the implementation phase of the Open Banking remedy, monitoring of compliance with the Order has also been a responsibility of the Implementation Trustee. The Implementation Trustee has created a separate monitoring function within OBIE (the Office of the Trustee), which has been closely monitoring the CMA9's conformance with the open banking standards, escalating issues to the CMA for enforcement where necessary.
36. In our view, prior to the establishment of a long-term regulatory framework for Open Banking, the most effective approach for ensuring continued high levels of compliance with the Order is to maintain a dedicated monitoring function supported by the Future Entity. This will ensure that the staff and assets responsible for monitoring existing standards can draw on the support of the staff and assets responsible for developing Open Banking beyond the scope of the Order. This is particularly important for the monitoring of existing

standards where the current Office of the Trustee draws on the wider resources of OBIE, particularly around gathering and processing data from the ecosystem. The monitoring team will report to the CMA to enable the CMA to ensure ongoing compliance with the Order. As part of these arrangements, the CMA will also consider whether there is an ongoing need for an Implementation Trustee (and how the Implementation Trustee will engage with the Board of the Future Entity) to perform the functions set out in the Order and will liaise with the Joint Regulatory Oversight Committee in this regard.

37. To make sure that the CMA is able to effectively ensure ongoing compliance with the Order:
  - (a) the monitoring team should be appropriately ringfenced from the wider organisation and the team's remuneration and other incentives should not be linked to the performance outcomes of the Future Entity;
  - (b) the CMA will specify the information it requires from the monitoring team; and
  - (c) the CMA may choose to replace the Implementation Trustee with a monitoring trustee, who would be responsible for overseeing the monitoring arrangements conducted by the monitoring function within the Future Entity and report to the CMA on the CMA9's ongoing compliance with the Order.
38. Following the establishment of a long-term regulatory framework for Open Banking, the CMA, in consultation with the Joint Regulatory Oversight Committee, will review the effectiveness of the monitoring arrangements outlined above to determine how the ongoing compliance with the Order should be monitored going forward. The CMA will take into account any broader review of the extent of the continuing obligations under the Order that the CMA may have undertaken.
39. In addition to monitoring activity related to the Order, the Future Entity should also consider undertaking wider monitoring of the ecosystem to inform itself and others of important developments and to ensure that any new standards are effectively developed and maintained. We consider that it will be for the Board of the Future Entity and the Joint Regulatory Oversight Committee to determine an appropriate monitoring function for non-Order related activity.

### ***Transitional arrangements***

40. OBIE will be responsible for preparing its ongoing operations, staff and assets for transition (including those staff and assets necessary to maintain those

requirements under the Order which will continue following completion of the Roadmap), planning and executing the transition, and the solvent and orderly winding up of OBL following transition (if the operations, staff and assets of OBIE are transferred to a new organisation). The execution of transition will only commence upon consent of the CMA. Consent shall only be provided when the CMA is satisfied, on advice from OBIE and the Implementation Trustee, with the terms of such transition, that adequate preparations for transition have been made, and that OBIE will transition to a financially stable and well governed entity. To enable the CMA to consent to transition, OBIE should regularly engage with the CMA at key points during the transition planning process. In turn, the CMA will work jointly with the Joint Regulatory Oversight Committee on the transition process.

41. We expect OBIE to develop a detailed plan for transition and an appropriate governance process for the planning and execution of transition, which should include consultation with industry and other key stakeholders, including consumer and SME representatives. We consider it essential that the arrangements that govern the transition to the Future Entity must not adversely impact upon the existing activities of OBIE in completing the Roadmap or put at risk the ongoing performance and maintenance of Open Banking. While planning and preparation for the transition can and should start prior to the completion of the implementation phase, formal transition itself will not begin until the Roadmap is completed (see paragraph 4). We would, however, support the establishment of the Future Entity in 'shadow' form to enable the smooth transition from OBIE to the Future Entity in due course.
42. The Joint Regulatory Oversight Committee will oversee the establishment of the Future Entity. This will include working with industry and other key stakeholders to determine an appropriate structure for the Future Entity and considering the implications of that structure, if any, for the Future Entity's funding and Board composition.

## **Background**

43. The Open Banking remedy was initiated in 2017 as part of a package of remedies by the CMA following the Market Investigation. The Market Investigation found that the weak customer response to price and quality in the personal current account (PCA), business current account (BCA) and SME lending markets meant that the discipline imposed by customers on banks through switching and the threat of switching was not as strong as it should be, and this led to banks having unilateral market power over their



existing customer base. As a result, banks' incentives to compete on price and/or quality and/or to innovate were reduced.

44. The Open Banking remedy was one of the 'foundation measures' put in place to address these problems.<sup>20</sup> Open Banking enables consumers and businesses to share their data securely with trusted third parties who are then able to provide them with applications and services which save time and money. It also enables consumers to initiate payments directly from their payment accounts to another bank account held by the payee without the use of cards. This has been achieved through the development and implementation of open API banking standards. The CMA ordered the CMA9 to create and pay for an OBIE to implement the Open Banking remedy.<sup>21</sup>
45. The UK pioneered the adoption of Open Banking globally and this initiative has, in the words of John Glen, Economic Secretary to the Treasury, 'taken the world by storm'<sup>22</sup> with around 30 other jurisdictions now following the UK's lead. As at January 2022, there were over five million users of services powered by Open Banking technology.<sup>23</sup> There is already a wide range of Open Banking applications – from buying a car<sup>24</sup> to paying taxes,<sup>25</sup> and new services have started to be developed to support less well-off consumers.<sup>26</sup> Open Banking has also started to facilitate the development of innovative payment services which could potentially come to compete with cards as a payment method and act as a substitute for direct debits.<sup>27</sup> It has been estimated that by September 2023, 60% of the UK population will be using Open Banking payments.<sup>28</sup>
46. The Open Banking ecosystem in the UK comprises more than 330 regulated firms made up of over 230 third party providers of services and more than 90

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<sup>20</sup> The three 'foundation measures' consisted of (i) Open Banking, (ii) service quality information and (iii) customer prompts. These had the object of increasing customer engagement and making it easier for personal and business customers to compare the prices and service quality of different providers, and of encouraging the development of new services.

<sup>21</sup> OBIE was established by the CMA9 as a limited company, Open Banking Limited (OBL).

<sup>22</sup> Foreword to the [Kalifa Review of UK Fintech](#).

<sup>23</sup> Open Banking [Press Release](#), January 2022.

<sup>24</sup> For example, [Cazoo now uses Open Banking payment services](#).

<sup>25</sup> HMRC has taken over £1billion in tax through Open Banking since enabling the collection of tax payments in this way, [Global Government Fintech, 29 September 2021](#).

<sup>26</sup> For example those with a thin credit file or adverse credit history (for example, [Signal, from Credit Kudos](#)), or to assist carers in identifying unusual spending patterns (for example, [Kalgera](#))

<sup>27</sup> [Variable recurring payments and sweeping](#), Token, 2021. Variable recurring payments, which enable SMEs to set up and control flexible future payment authorisations, will allow 'sweeping services' which, if instructed to do so by a consumer or SME, transfer spare cash to savings accounts where they will accrue interest and/or provide short term credit in competition to bank overdrafts.

<sup>28</sup> [The Future of ecommerce payments](#), Truelayer.

payment account service providers who together account for over 95% of current accounts.<sup>29</sup> Open Banking has therefore been a major success in securing positive outcomes for consumers and businesses and improving competition in retail banking, and also has significant wider transformative potential for the wider UK economy as it continues to develop in the future.

47. Open Banking in the UK represents the forefront of innovation in Open API propositions to date, but there are much wider potential benefits beyond retail banking. A number of propositions are being actively considered by Government, regulators and industry participants, including:

- (a) **New payment methods:** The Government's vision is for a payments sector at the forefront of technology and innovation in which the full potential of Open Banking enabled payments is unlocked safely and securely. This would increase competition and choice between payment systems, enabling exciting opportunities for financial technology companies (fintechs) to build the next generation of payments with new innovative services offering cheaper and more tailored payments.<sup>30</sup> This vision is also reflected in the PSR's strategy.<sup>31</sup>
- (b) **Smart Data:** Smart Data is the secure and consented sharing of customer data with authorised third-party providers who then use this data to provide innovative services for businesses and consumers. The extension of Smart Data will, in time, deliver new innovative services, stronger competition in the affected markets – for example financial services beyond banking or telecommunications - and better prices and choice for consumers and small businesses, including through reduced bureaucracy. Competitive data-driven markets can reduce friction for established market players and drive start-ups, investment, and job creation.<sup>32</sup>

### ***CMA Order and implications for the future of Open Banking***

48. The Order which gave effect to the remedies package resulting from the Market Investigation required the CMA9 to create OBIE (incorporated as OBL), to agree and adopt common and open standards for Open Banking and

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<sup>29</sup> For a comprehensive list of providers and applications using open banking, see [OBIE's app store](#).

<sup>30</sup> [Payment Landscape Review: Response to the Call for Evidence](#), HM Treasury, October 2021.

<sup>31</sup> [The PSR Strategy](#), January 2022.

<sup>32</sup> [Next steps for Smart Data: Putting consumers and SMEs in control of their data and enabling innovation](#), BEIS, September 2020.

to appoint, subject to the CMA's approval, the Implementation Trustee to act as Chair of OBIE and oversee the Roadmap agreed with the CMA.

49. It was originally envisaged that the CMA9 would adopt the final API standards in 2018 to coincide with the coming into force of PSD2 in the UK and that this would mark the completion of the implementation phase of the project. Only two of the CMA9 met this deadline and changes to the regulatory technical standards for PSD2 were made which required additional work from OBIE and CMA9. Consequently, the Implementation Trustee proposed changes to the Roadmap which the CMA approved. The final iterations of this Roadmap envisage OBIE's role in the implementation phase of the Open Banking remedy ceasing later this year.<sup>33</sup>
50. The Order was not specific about what arrangements would be put in place to oversee the CMA9's continuing obligations once the implementation process was complete. This was because the CMA judged it appropriate to retain flexibility in the drafting of the Order given other related projects that were being contemplated at the time.
51. In March 2021, the FCA published its [Feedback Statement](#) on Open Finance. It said that Open Finance had the potential to transform the way consumers and businesses used financial services and that as part of a wider drive for open data in other sectors, Open Finance could also support cross-sector innovation and help unlock the value of data across the economy. The paper explained how Open Finance would fit with the Smart Data initiative: that BEIS would introduce legislation to require industry to participate in data sharing arrangements and that sector specific schemes would be mandated through secondary legislation. In the case of Open Finance, any secondary legislation would be led by HM Treasury.
52. In June 2021, BEIS committed to introducing primary legislation to give Government Departments overseeing particular sectors the power to require participation in data sharing schemes.<sup>34</sup>
53. In October 2021, HM Treasury published its [response](#) to a call for evidence on the UK payments landscape. This identified a priority area of unlocking of Open Banking enabled payments safely and securely to allow consumers to pay for goods and services in shops and online directly from their accounts, rather than using a debit or credit card, creating competition and choice

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<sup>33</sup> On 23 March 2022, the CMA published a [letter](#) to the Implementation Trustee regarding the current status of the Roadmap.

<sup>34</sup> [The Smart Data Report: Spring 2021](#).

between payment systems and enabling exciting opportunities for fintechs to build the next generation of payments.

54. In January 2022, the PSR published its [strategy](#), identifying account-to-account payments, including through Open Banking, as a key potential driver to increasing competition for retail payments.

## Consultation process

55. The CMA anticipated that there would be a need for ongoing oversight of the Open Banking remedy beyond the implementation phase of its Order. In order to retain flexibility in the drafting of the Order (given other related projects that were being contemplated at the time), neither the Retail Banking Market Investigation Final Report nor the Order set out explicitly what arrangements should be put in place following implementation of the Order. Contemporaneous supporting documentation nevertheless indicate the expectations at the time:

- (a) Paragraph 17 of Part A of Schedule 1 of the Explanatory Note to the Order anticipates the ‘need to ensure that open banking standards and governance processes are maintained beyond the implementation of the last stage of the CMA remedies in January 2018 and are consistent with the adoption of open API standards in other sectors of the financial services market, for example mortgages’.
- (b) Paragraph 39 further states that ‘once the Read-only Data Standard and Read/Write Data Standard are adopted there may be merit in either (i) expanding the scope of the Implementation Entity or (ii) creating a new industry body, or working with an existing one, to oversee the structure and development of APIs’. This section of the Explanatory Note concludes ‘Ultimately the CMA, while wishing to ensure the remedy remains effective, would welcome these bodies and the industry taking ownership of these issues and it may be appropriate at that stage to agree different arrangements (for example with different funding and governance structures) or it might be appropriate for the CMA to review whether parts of the Order should be amended or can be revoked because they have been superseded by longer-term arrangements’.

56. In March 2021, UK Finance published a [blueprint for a Future Entity](#). In summary, this proposal comprised a not-for-profit company limited by guarantee whose membership would extend beyond the CMA9 to other regulated firms in the ecosystem, to provide technical support services to the industry, funded initially by the CMA9 but supported by other stakeholders in

future as members and through the sale of commercial services. Some of the key elements of this proposal were:

- (a) The Open Banking operating model should evolve to support the service requirements of a) the CMA9 and the obligations of the CMA Order b) the needs of the Payment Services Regulations 2017 community and c) extension to future changes, such as Open Finance and Smart Data d) the development of the EU SEPA API Access scheme and e) the call from HM Treasury in the Payments Landscape Review to develop the potential of open banking payments.
- (b) The Future Entity would be a not-for-profit private company limited by guarantee, with a Board comprising of nine voting members, comprising the Chair, Chief Executive and seven NEDs. The seven NEDs would include two independent directors, one director nominated for appointment as a consumer organisation representative, and four directors nominated for appointment by members of the Future Entity, representing different categories of participant.
- (c) The company would have members (rather than shareholders). Members would gain access to service capabilities as well as having additional rights around nominating / approving Board appointments and access forums to bring matters to the attention of the Board.
- (d) Annual funding requirements for the Future Entity should be covered proportionally by member ASPSPs. As part of the transition, the current CMA9 ASPSPs will be requested to commit to an initial three years of membership and corresponding funding commitments to ensure continuity and give the Future Entity time to form and stabilise in the industry.

57. On 5 March 2021, the CMA launched a [public consultation](#) on the future oversight of the CMA's Open Banking remedies, inviting views on the future arrangements for the governance of Open Banking that would result in a framework that would be:

- (a) independently led and accountable;
- (b) adequately resourced to perform the functions required;
- (c) dedicated to serving the interests of consumers and SMEs; and
- (d) sustainable and adaptable to future needs of the ecosystem.

58. We received over 60 written responses to this consultation from a wide range of stakeholders and discuss these in more detail in paragraphs 66 to 220.

## **The Independent Report**

59. In September 2020, Alison White was appointed to lead an independent investigation, with support from the law firm Mishcon de Reya, following receipt of a complaint setting out a number of allegations relating to OBIE; to the then Implementation Trustee; and to certain current and former senior staff members of OBIE.
60. On 1 October 2021, the CMA published the [Independent Report](#), which concluded that OBIE had not been properly managed and a lack of appropriate corporate governance was a direct contributor.

### ***Changes at OBL as a result of the Independent Report***

61. Following publication of the Independent Report, the CMA, together with OBIE and the new Implementation Trustee, and where appropriate including the CMA9, have taken a number of steps to significantly strengthen corporate governance at OBIE, including:
  - (a) appointment of a new Implementation Trustee and Chair, who has committed to focus on workplace culture and improving corporate governance as immediate priorities;
  - (b) appointment of a Chief Executive Officer (CEO) of OBL;
  - (c) appointment of two independent NEDs to the OBL Board; and
  - (d) changes to update the [Agreed Arrangements](#) setting out the composition, governance, budget and funding arrangements for OBIE to take account of the Independent Report's recommendations and to implement a more effective governance framework for OBIE.

### ***Recommendations for a successor entity***

62. The Independent Report included observations about the importance and role of good corporate governance in general, and at OBL in particular. It also specified a list of recommendations, including those for any successor entity to OBL.
63. The Independent Report stated: 'Good governance signals to the outside world that an organisation is well managed and that the interests of management are aligned with other stakeholders. Indicators that an appropriate governance structure is in place and working effectively should in my view include:

- (a) a balanced, competent and diverse board, which regularly reviews its own effectiveness;
  - (b) solid foundations for oversight and scrutiny, including appropriate and timely performance metrics, based on a balanced scorecard;
  - (c) adequate disclosures around related parties' transactions and director's other interests;
  - (d) an effective risk management and internal control framework and periodically reviewing its effectiveness;
  - (e) integrity in corporate reporting;
  - (f) transparency for stakeholders both in the good and bad times to promote confidence and respect; and
  - (g) an emphasis on integrity and promoting ethical behaviours'.<sup>35</sup>
64. Alongside these principles, the Independent Report emphasised that the mistakes that were made in the governance of OBL must not be repeated and, in particular, that a proportionate system of corporate governance would need to be implemented for the transition and successor organisation to OBL, which was termed 'NewCo'. The Independent Report stated that urgent consideration is given to:
- (a) appointment of independent NEDs (and excluding any role, including of design, for directors from the predecessor organisation, to provide public confidence);
  - (b) financial transparency, including urgent completion of the requested financial audit and ongoing open book accounting, for the organisations that finance NewCo;
  - (c) redesign of corporate governance processes, including (and most especially) clarity of purpose through revised articles of association and a clear remit for the Board; an appropriate committee structure, including audit, risk, nomination and remuneration committees, and observer status for the CMA and CMA9 at all Board meetings;
  - (d) a programme of independent (internal) audit to review major areas of risk in NewCo's business;

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<sup>35</sup> [Independent Report](#), page 32.



- (e) An organisation-wide review of resourcing in the context of the revised purpose, with independent oversight;
  - (f) implementation of an appropriate suite of policies, to include management of conflicts of interest; procurement; remuneration (especially of directors); recruitment; diversity and inclusion; equalities; whistleblowing; discipline; grievance and management of complaints;
  - (g) implementation of balanced scorecard measures with transparent publication to the Board and key stakeholders, which include leading indicators such as turnover rates, complaints received, exit interview information; and appropriate scrutiny of that performance information by the Board on a regular basis; and
  - (h) an external review of the effectiveness of the HR function, with Board oversight of the resultant improvement plan.<sup>36</sup>
65. The Independent Report also stated that, in order to learn from these experiences and regain the trust and confidence of stakeholders and the public, those responsible for the past management failures at OBL (managers, and especially the director) should be excluded from the design and governance of NewCo and the arrangements for transition to it.<sup>37</sup>

## Responses to the consultation and CMA views

66. Before we consider the responses to the specific questions we consulted on, we first consider alternative governance arrangements that were proposed to us in response to the consultation.
67. Although these alternative proposals raised important issues, we were mindful of the extent of our legal powers under the Order and the changing nature of our role following the completion of the implementation phase of the Open Banking remedy. In some instances, these considerations have meant that it would not be practicable and/or desirable to implement alternative proposals in the form put to us.
68. Nonetheless, where we thought specific elements of alternative proposals had merit, we have sought to incorporate these in our conclusions on the appropriate future governance arrangements for Open Banking. Drawing on alternative proposals put to us, we have, for example, proposed (in the section on independent and accountable leadership below) that the

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<sup>36</sup> [Independent Report](#), pages 32 and 33.

<sup>37</sup> [Independent Report](#), page 33.



appointment of the first Chair of the Future Entity is subject to regulatory approval, and that their plans, budgets and annual reports are subject to additional transparency and scrutiny.

*Consumer and SME representatives on the implementation entity steering group (IESG)*

69. The consumer and SME representatives on the IESG<sup>38</sup> proposed an alternative, detailed blueprint for the future of Open Banking. This blueprint did not see the need to create a successor body to OBIE at this stage. It envisaged two phases in the evolution of Open Banking governance: in the short-term, an evolution of OBIE; and, in the longer-term, Open Banking forming part of the Smart Data initiative.
70. An important aspect of this approach was the proposal that the CMA should immediately put in place a fully independent Board for OBIE, with an independent Chair and independent directors working alongside the Implementation Trustee and a new Chief Executive.
71. The consumer and SME representatives on the IESG believed that OBIE, under the supervision of its independent Board, should:
- (a) focus in the short term on completing the Roadmap, delivering the outcomes envisaged in the Order, and setting out the medium to long term strategy for Open Banking;
  - (b) work with the PSR and Pay.UK to identify responsibilities and activities required to make Open Banking payments an effective competitive force in the UK payments market and to investigate the possibility of moving payments APIs to Pay.UK; and
  - (c) work with BEIS and the FCA to plan for an orderly transition to a future Smart Data Function.

***CMA view***

72. **We have made many of the changes to the governance of OBIE recommended by the consumer and SME representatives on the IESG (eg the appointment of independent NEDs to the Board). We consider issues relating to the Board composition of the Future Entity, including**

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<sup>38</sup> IESG includes the Implementation Trustee, end users representatives and the CMA9 amongst other members and advises the Implementation Trustee on the implementation of the Roadmap.

the proposal for an independent Board, further in the section headed 'independent and accountable leadership' below.

73. **We agree on the importance of working closely with other bodies and about the importance of completing the Roadmap.**
74. **It is a matter for Government to determine whether the longer-term, regulatory oversight of Open Banking should be provided for under Smart Data legislation.**
75. **We consider that there is merit in the proposal that current governance arrangements should remain in place until all elements of the Open Banking remedy implementation have been completed and transition can take place. The implementation obligations under the Order continue until all the elements of the Roadmap have been implemented. Further, as there are ongoing obligations which may require central coordination, the CMA needs to be satisfied that adequate arrangements will be put in place prior to any change in governance. However, we also consider that there is a risk of losing momentum if work is not started on putting in place new arrangements, given the narrow legal remit under which OBIE currently operates. We also note that there are limitations on OBIE's ability under the Order to carry out the wider policy formulation role envisaged by these proposals.**

#### *FDATA*

76. FDATA submitted that OBIE should be maintained 'as-is' until the legislative framework for Open Finance had been developed. It believed that the Future Entity would then have the mandate to ask banks and other financial institutions to fund API development beyond PSD2 (as implemented via the Payment Services Regulations 2017).
77. FDATA proposed a different governance structure for the Future Entity, with the Implementation Trustee acting as Chair of the Board. It told us that, without an independent Board, the Future Entity's funding model could lead to banks having undue influence and refusing to fund proposals that would benefit TPPs to the detriment of banks.

#### ***CMA view***

78. **We consider it essential that the arrangements that govern the transition to the Future Entity must not adversely impact upon the existing activities of OBIE in completing the Roadmap or put at risk the ongoing performance and maintenance of Open Banking. While planning and**

**preparation for the transition can and should start prior to the completion of the implementation phase, formal transition itself should not begin until the Roadmap is completed later this year.**

- 79. **We do not consider it possible (or desirable) to maintain OBIE in its current form until future legislation is enacted. Furthermore, delaying work on a Future Entity is likely to result in slower development of the broader ecosystem.**
- 80. **We consider that the FDATA proposals to establish a Board and independent NEDs are desirable and appropriate. We discuss this further, as well as the role of the Chair, in the section headed ‘independent and accountable leadership’ below.**

#### *Pay.UK*

- 81. Pay.UK told us that there were clear potential synergies and benefits of it taking on responsibility for Open Banking payments-related activities from OBIE, should such a subset of activity emerge.
- 82. Pay.UK said that it would consolidate the setting of rules and standards between Open Banking and Pay.UK; facilitating end-to-end payments flows, reducing friction across the value chain and avoiding the externalities associated with multiple entities imposing different, potentially incompatible standards at different stages in a payment flow. It proposed a separate working group to explore this option further.

#### *CMA view*

- 83. **We consider that the future oversight of Open Banking should be jointly led by the FCA and the PSR. The FCA authorises, regulates and supervises Open Banking and payment firms, including through its role as competent authority for the Payment Services Regulations 2017. The PSR is the economic regulator for payment systems.**
- 84. **We consider it is possible that, in the future, Open Banking payments may play a part in the development of New Payments Architecture (NPA), the UK payments industry’s proposed new way of organising the clearing and settlement of payments between banks, known as interbank payments. However, it is too early to reach a firm view on this.**

## ***The consultation questions***

85. We now consider the responses to the specific questions that we set out in the consultation.

### ***Independent and accountable leadership***

86. In the consultation, we asked about four issues related to how any Future Entity should be governed and led:
- (a) Appointment of the Chair.
  - (b) Composition of the Board.
  - (c) External accountability of the Board.
  - (d) Independence of the Future Entity.
87. We set out below the key issues raised, followed by our own conclusions at the end of the section.

### ***Appointment of the Chair***

88. A number of respondents argued that the CMA or another regulator should play some form of oversight role in the appointment of the Chair. However, not all respondents took this view, and some were divided on what any regulator's role should be and who should make the final determination.
89. Some respondents argued that the Future Entity's members or Board should appoint the Chair. However, others suggested that the CMA or another regulator's final approval should be required. One respondent told us that the appointment of the Chair should be overseen by the Commissioner for Public Appointments, whereas another suggested that the Advisory Committee should solicit nominations for the Chair to be voted on by members.
90. Several respondents made a distinction between the appointment of the first Chair of the Future Entity and the appointment of subsequent Chairs.
91. One respondent suggested that regulators, including the CMA, could make representations on the appointment of the first Chair. Other respondents suggested that the CMA should lead the selection and appointment of the first Chair.
92. Many respondents expressed concern about the possibility of the Chair being appointed for an indefinite term. Some respondents suggested that the Chair should be appointed for a fixed term of between three and five years.

93. One respondent suggested that members should have the ability to remove the Chair and Chief Executive.

#### *Composition of the Board*

94. Respondents provided a range of views on the composition of the Board.
95. Several respondents highlighted that the proposal from UK Finance had much in common with the Payments Council which had been heavily criticised by the Treasury Select Committee some 10 years earlier on the grounds that it was dominated by banks. They believed that the same mistakes would be made if the UK Finance proposals were adopted.
96. Some respondents felt that the Board composition proposed by UK Finance would represent a balance of perspectives of the Open Banking ecosystem. Other respondents believed that there should be a small number of additional representatives, including consumer and industry representatives.
97. Several respondents argued that the Board should be composed of a broad spectrum of representatives focused on specific subject matters and aims, including consumer interests and broad societal and environmental benefits.
98. Some respondents indicated that the Board should include a regulator in an observer role.
99. One respondent told us that there was still a question over the necessary quorum so that all the interests were adequately represented and there was no risk of one party or group dominating the Board. Another respondent suggested that there should be a review of the Board every two years to ensure that it was properly representing the views of participants and the market.
100. Several respondents highlighted that they believed that the sector would evolve over time and that the Future Entity's governance and operating model should be capable of adapting to changes in the sector as and when required.

#### *Accountability of the Board*

101. Several respondents stressed the need for transparency, including two respondents who suggested that this could be achieved by the publication of the minutes of Board meetings and its key decisions.
102. Some respondents suggested that the CMA should be provided with an annual report on the performance of the Future Entity.

103. Some respondents emphasised the importance of having an effective system for resolving disputes and addressing complaints, suggesting that either the Chair or a regulator should arbitrate in the event of disputes.
104. Two respondents suggested that some executive roles should be subject to the FCA's Senior Managers and Certification regime to ensure accountability and propriety.

#### *Independence of the Future Entity*

105. In the consultation, we asked whether the initial funding model proposed by UK Finance, whereby the Future Entity is initially wholly reliant upon receiving funding from the CMA9, risked undermining the Future Entity's ability to act independently, and if we could be confident that the Future Entity's proposed governance structure would be sufficient to resist such pressures.
106. There was disagreement among respondents in relation to whether there would be a risk that the Future Entity's ability to act independently would be undermined by its reliance upon the CMA9 for funding.
107. One respondent told us that a governance model which, amongst other features, envisaged all ecosystem participants being members of the Future Entity, would be sufficient to mitigate the risk that the Future Entity would not be able to act independently. Another respondent warned that customer detriment could result from the Future Entity's management committee having too much independence.
108. Many respondents suggested that there was a risk of the CMA9 undermining the Future Entity's ability to act independently. One respondent told us that the governance of the Future Entity should include regulatory oversight to address any lack of innovation, higher prices and reduced competition. Another respondent proposed that the CMA should impose a funding requirement on the CMA9, in advance, and review it on a periodic basis.
109. Some respondents told us that they were concerned about the involvement of UK Finance, a trade association for the UK banking and financial services sector, having an adverse effect on innovation.
110. Respondents were divided on whether votes (eg to approve the appointment of the Chair) should be weighted by participant to give particular stakeholders greater influence.
111. Some respondents tended to support some degree of weighting to reflect different funding contributions and/or different usage volumes. One

respondent argued that there were obligations on ASPSPs under the Payment Services Regulations 2017 which were not shared by TPPs.

112. Other respondents thought that weighted voting was inappropriate. They argued that every participant should have an equal say. One participant emphasised that Open Banking impacted all participants in different ways and therefore, all their voices and concerns needed to be heard and represented equally.
113. One respondent told us that, if votes were weighted, safeguards should be adopted to prevent coordinated behaviour from certain members.

### ***CMA view***

114. **While the precise composition of, and governance arrangements for, the Board of the Future Entity will be overseen by the Joint Regulatory Oversight Committee, our view is that the Board of the Future Entity should be majority independent, broadly based and representative of the range of stakeholder interests. This would avoid the risk of any one stakeholder group having undue influence over the strategy and direction of the Future Entity and will also ensure that the Future Entity has access to the necessary technical expertise. We consider that the Board should be representative of key stakeholders, including end users, and this should be reflected in the roles and composition of the Board**
115. **We expect the Board to implement additional mechanisms to ensure it has access to the necessary technical expertise and that it is representing the interests of all key stakeholders. For example, the Board:**
  - (a) could receive technical advice from Participant Groups<sup>39</sup> and an informed and qualified Advisory Committee; and**
  - (b) should be fully transparent so that it can be closely scrutinised and held to account by its stakeholders. It could do this by, for example, conducting regular reviews of performance and making this information available by publishing clear performance metrics.**
116. **The Future Entity should have a Chair and a CEO. To avoid conflicts of interest and to provide effective leadership, we consider that each of**

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<sup>39</sup> Participant Groups bring together key stakeholders around a common interest to create proposals for further enhancements.

these roles should be fulfilled by a different person and there should be a clearly specified delineation of responsibilities for these roles. The Chair should be responsible for leading the Board (including ensuring robust governance structures exist and are regularly reviewed) and ensuring that the Board sets the strategic direction of the Future Entity. The CEO should be responsible for ensuring the Future Entity delivers the strategy and for day-to-day management, including all existing and future activities that it performs. The role of the Chair is particularly important since the person appointed would, with support from other Board members and the senior executive team, determine the broad direction of the Future Entity and its priorities.

117. We agree that the appointment of the Chair should be time limited. We also note the concerns raised about the weighting of votes in relation to the appointment of the Chair. As a general principle, we do not consider it desirable to give larger market participants an excessive influence over strategic decisions, so our preference would be for equal voting rights.
118. We agree with the suggestion that to enhance its accountability, the Future Entity should operate transparently by, for example, publishing its board minutes and annual plan. We consider that the Future Entity should adhere to high standards of corporate governance in line with the UK Corporate Governance Code. The Future Entity should establish appropriate risk management and internal control processes, adopt appropriate committee structures, including audit, risk, nomination and remuneration committees, and design and implement an appropriate suite of policies to address issues, such as conflicts of interest; procurement; remuneration; recruitment; diversity and inclusion; equalities; whistleblowing; discipline; grievance and management of complaints. The Board should also conduct an annual review of its own effectiveness, providing the results of this to the Joint Regulatory Oversight Committee until the establishment of a long-term framework for Open Banking.
119. To ensure effective regulatory oversight until a long-term regulatory framework for Open Banking is established, the Joint Regulatory Oversight Committee should consider whether the:
  - (a) appointment of the first Chair of the Future Entity, and any subsequent appointment, should be subject to approval by the Joint Regulatory Oversight Committee;



- (b) **CMA, the FCA and the PSR should attend Board meetings as observers; and**
- (c) **Board of the Future Entity should provide regular and transparent reporting to the Joint Regulatory Oversight Committee. For example, any actions or recommendations arising from the Board's annual review of its effectiveness and the Future Entity's draft strategy, annual plan and budget should be subject to the Joint Regulatory Oversight Committee's approval.**

*Adequately resourced*

120. In the consultation, we asked about three issues related to whether the Future Entity would be adequately resourced:

- (a) The adequacy of the overall financial framework, as proposed by UK Finance, and alternative models that might be put forward.
- (b) Whether we could have confidence that sufficient resourcing would be made available.
- (c) The resourcing of contributory services, such as the onboarding of new TPPs.

121. We set out below the key issues raised, followed by our own conclusions at the end of the section. Many respondents also raised a broader concern that funding arrangements would provide particular providers with excessive leverage and so we also consider how this risk could be mitigated below.

*Adequacy of overall financial framework*

122. In the consultation, we asked whether the overall framework proposed by UK Finance was capable of performing the functions necessary to ensure the effectiveness of the CMA's Open Banking remedies going forward and whether there were alternative approaches that the CMA should consider.

123. Several respondents stated that a levy should be imposed on all participants based on a fair method of calculation. Some respondents told us that this would break the link between the CMA9 and the future direction of the Future Entity. Similarly, two respondents told us that the funding structure could be aligned to the FCA fees structure. Two other respondents cautioned that tying funding to membership made funding inherently unstable and could undermine the operating model and independence of the Future Entity. Another respondent submitted that they were unsure how a levy applied to all

ecosystem participants would operate in practice and it did not consider this option to be viable.

124. Several respondents believed that TPPs could be asked to pay for premium services which were not mandated under the Order or the Payment Services Regulations 2017. Other respondents expressed concerns about this approach. One respondent argued that it was premature to initiate discussions on future models that revolved around additional or premium services. Another respondent told us that such a 'pay to play' model could result in firms acquiring influence over the content of standards and it was hard to see how that would promote innovation and the consumer interest.
125. Although respondents generally told us that it was important that the Future Entity remained not-for-profit, one respondent highlighted that the proposed governance and funding model may not be set up to take investment risks.

#### *Sufficiency of resourcing*

126. In the consultation, we asked whether the funding model proposed by UK Finance was sufficient to ensure that the Future Entity had adequate resourcing to deliver the residual requirements of the Order and whether more financial support should be sought from TPPs.
127. There was a widespread view amongst respondents that the adequacy of future funding for the Future Entity was difficult to predict beyond the initial three-year period proposed by UK Finance. Respondents provided a diverse range of perspectives on the reasons for this uncertainty.
128. Some respondents expressed doubt over whether the CMA9 would continue to fund the Future Entity after the initial three-year term proposed by UK Finance. Some respondents argued that CMA9's commitment should be no longer than three years, while other respondents argued that a longer commitment was needed and ongoing funding by the CMA9 should continue to be mandatory. Some respondents told us that there was a risk that funding members only permitted the Future Entity to work on areas which they had a self-interest in progressing and a time-limited commitment to funding would place the Future Entity under pressure to conform to the wishes of the largest funders. Conversely, one respondent told us that the Future Entity could come under pressure to prioritise work that reduced its reliance on funding from the CMA9.
129. Several respondents remarked that the Future Entity's revenue would be uncertain. Respondents argued that the Future Entity's external revenues may not be significant in the future, particularly if there were market

alternatives that could be developed more cost effectively and could perform some of the same functions as the Future Entity. Another respondent stressed that there was a risk of diverging focus from the core functions of the Future Entity to the new functions funded by external funding.

130. Some respondents also called attention to the ability of the Future Entity to achieve the expected cost reductions envisaged under the UK Finance Proposal. Other respondents suggested that the proposed cost reductions could reduce the likelihood of innovation and one respondent told us that the Future Entity's budget should be revised upwards only.
131. While some respondents believed that TPPs could become a source of future revenue for a Future Entity, other respondents felt that core services should be free for TPPs in order to comply with PSD2 (as implemented via the Payment Services Regulations 2017). Many respondents also underlined the risk that requiring TPPs to bear some of the cost of the Future Entity could be prohibitive to small early-stage businesses. One respondent told us that requiring TPPs to provide funding would put the UK at a disadvantage compared to the rest of Europe where all PSD2 APIs were available free of charge.

#### *Contributory services*

132. OBIE has performed functions and supplied services which, while not stipulated in the Order have, in the opinion of many stakeholders, proved fundamental to maintaining a well-functioning ecosystem. These include, for example, the onboarding services that OBIE provides to help TPPs interface with ASPSPs. In the consultation, we asked whether or not the CMA and other stakeholders could be confident that these services would be maintained, as well asking about any other potential concerns.
133. Respondents generally agreed that future investment decisions should take into account the interests of the members and ensure appropriate value for money.
134. Only a few respondents indicated that they were confident about the ability of the Future Entity to maintain OBIE's functions which were not stipulated in the Order.
135. Many respondents did not believe that the Future Entity should maintain and develop the functions and services currently provided by OBIE. Several respondents indicated that the party or parties driving an initiative should be responsible for sourcing or providing funding for that initiative. Some

respondents also emphasised that it was important for the CMA9 to have greater control over costs.

136. Another respondent told us that other commercial organisations performed the same or better services at competitive commercial rates as OBIE did currently and that any Future Entity should be mindful of the need to avoid unfair competition with commercial service providers.

*CMA view*

137. **The Order applies to the CMA9 and requires them to set up and fund OBIE. The CMA9 will also be required to fund the costs related to the ongoing requirements under the Order following the completion of the implementation phase of the Open Banking remedy.**
138. **As Open Banking develops beyond the scope of the Order, there is a risk that if the CMA9 are the main committed funders of the Future Entity, even if only in its early years, they may assume a position of greater influence over the Future Entity. However, we are also mindful that if the Future Entity does not have access to the funds needed to implement the plans agreed by the Board and the Joint Regulatory Oversight Committee, the Future Entity may be unable to fulfil its purpose.**
139. **We recommend that the current funding arrangements for OBIE should remain in place for the Future Entity in its discharge of functions beyond the scope of the Order until a long-term funding model has been agreed by the Board of the Future Entity and the Joint Regulatory Oversight Committee. We note that UK Finance proposed that the annual funding requirements should be covered proportionally by member ASPSPs.**
140. **We expect the Board of the Future Entity to design and implement a more broadly-based and sustainable funding model, engaging closely with the Joint Regulatory Oversight Committee. We consider that there are many different funding models available that may be appropriate for the long-term development of Open Banking, including:**
- (a) a CMA9-funded model (similar to the OBIE model);**
  - (b) expanding the existing funding requirements to include other larger institutions (eg ASPSPs and TPPs over a certain threshold);**
  - (c) a membership fee (flat, tiered membership costs);**
  - (d) pay-per-use fees (volume-related charges);**

- (e) premium charges (higher charges for discretionary add-ons to the core services); and
  - (f) a levy (a mandatory charge to all relevant members of the ecosystem, which could be tiered or volume-related).
141. We consider that there needs to be a clear commitment to achieving a more broadly based funding model, which would further reduce the extent to which the CMA9 (or indeed any other group of market participants) can exert, or have the appearance of exerting, disproportionate influence over the Future Entity by virtue of their funding contribution. This may involve securing financial contributions from TPPs, as well as enabling the Future Entity to seek commercial revenues. In determining an appropriate long-term funding model, the Board of the Future Entity should consider the implications of this, if any, for Board composition, consulting appropriately with all relevant stakeholders.
142. We note that the optimum funding mechanism may change over time. For example, it may be necessary for the ASPSPs to provide initial funding (or at least act as guarantors for a given level of funding), but as the Future Entity is better established and expands its activities it may be possible to transition to an alternative model. However, any alterations to the funding mechanism should be done in a way which protects the ongoing existence and performance of the Future Entity (eg through mandatory participation) to avoid the potential for inappropriate influence techniques (eg threatening to withhold funding).
143. We consider it important that the Future Entity is fully transparent regarding its financial information and expenditure, as this will promote confidence and respect, as well as building support for the transition towards a more sustainable funding model. In particular, we think it is important that the Future Entity is able to demonstrate that it is being effective and efficient, representing good value for money to those funding it and to the wider ecosystem. In our view, the Future Entity should have appropriate systems of financial reporting and control and may also benefit from additional reporting mechanisms.

#### *Representation of consumers and SMEs*

144. In the consultation, we asked about three issues related to end user representation:

- (a) Whether the proposed arrangements would ensure effective representation of consumer and SME interests or whether any alternative arrangements would be more suitable.
  - (b) Whether the interests of consumer and SMEs could be adequately represented by the same board member, with support from the advisory committee.
  - (c) The process and criteria that should be used to select the end user representatives on the Board and Advisory Committee, including whether there should be, for example, a specific reference to the needs of vulnerable or less well-off consumers.
145. We set out below the key issues raised, followed by our own conclusions at the end of the section.

#### *Effective and adequate representation*

146. Some respondents told us that the UK Finance proposal, whereby one member of the Board would represent the interests of consumers and SMEs, would be sufficient. However, many other respondents argued that consumers and SMEs did not always share the same interests and they should therefore be represented by different people. Several respondents suggested that an additional NED should be appointed to the Board to represent the interests of SMEs. Some respondents also believed that it was important for a NED representing a specific group to have a responsibility to consult with them and have knowledge of the issues they are facing.
147. One respondent highlighted that there was no mention in the UK Finance proposal of the continuation of the existing forums representing consumers and SMEs nor of the existing Consumer Evaluation Framework being used to assess the effect on consumers.
148. One respondent told us that that SMEs were not a homogenous group and another respondent highlighted that some SMEs had insufficient resources to participate in consultations, policy and corporate affairs.
149. One respondent told us that they felt it would be more appropriate to have both a consumer representative and an SME representative on the Advisory Committee.

#### *Selection process and criteria*

150. Several respondents believed that the process for appointing representatives of consumers and SMEs should follow the proposed selection process for the

Chair and other independent NED members of the Board. Other respondents argued that an appointments panel or the FCA Consumer Panel should be involved in the selection process.

151. Some respondents told us that the representatives should work for consumer organisations and have knowledge of a broad set of consumer and SME needs. However, another respondent said that the representatives should be remunerated and recruited from a wide pool of potential candidates.
152. Many respondents highlighted that the entire Board had an important role in ensuring that the interests of consumers and SMEs were adequately and effectively represented. Some respondents argued that progress towards this aim should be formally monitored.
153. One respondent believed that there should be a fully independent governance model comprising, amongst other appointments, a Board made up of independent directors with appropriate consumer expertise. It argued that all members of the Board should be openly and independently appointed rather than reflecting specific stakeholder interests.

#### *CMA view*

154. **The Board of the Future Entity should be independent from undue influence by any group of stakeholders and representative of key stakeholders, including end users. This should be reflected in the roles and composition of the Board, in order to ensure that it acts in the best interests of end users.**
155. **The Joint Regulatory Oversight Committee should consider how consumers and SMEs are effectively represented on the Board and in any other parts of the governance structure. Further, any consumer and SME representative should be provided with sufficient resources to enable them to fully capture the views of their respective communities and represent them at all levels of governance. Subject to approval by the Joint Regulatory Oversight Committee, the Future Entity may also choose to adopt any existing tools or fora within the current governance framework for OBIE that have proved effective in representing end users, such as the Consumer Evaluation Framework and the End User Risk Committee.**

#### *Sustainability and adaptability*

156. In the consultation, we asked about four issues related to the sustainability and adaptability of the Future Entity:

- (a) Whether we could have confidence in the commitment from the CMA9 and whether the withdrawal of one or more of the CMA9 from being members of the Future Entity would be a cause for concern in terms of the sustainability of the model.
  - (b) The fairness of the funding model proposed by UK Finance and in particular, whether it would allow non-CMA9 account providers to ‘free ride’ (ie enjoy the benefits generated by the Future Entity without making an appropriate contribution).
  - (c) The suitability of the Future Entity to implement other ‘open’ projects, such as the Open Finance and the Smart Data initiatives.
  - (d) Whether the remit of the Future Entity should extend to payment initiation standards.
157. We set out below the key issues raised, followed by our own conclusions at the end of the section.

#### *Membership commitment*

158. Respondents were divided on whether membership of the Future Entity ought to be made mandatory for the CMA9.
159. Some respondents believed that membership for an initial period of three years would be sufficient, as the CMA9 would continue to be bound by the Order and the legal requirements under the Payment Services Regulations 2017 and the UK Regulatory Technical Standards.
160. Several respondents suggested that the CMA could have an option to extend the initial membership period beyond three years. One respondent highlighted that it had been difficult to predict the pace of progress in Open Banking so far.
161. Many respondents argued that that the CMA9 should be bound indefinitely to remain members of the Future Entity. These respondents generally claimed that the withdrawal of one or more of the CMA9 could jeopardise the stability of the Future Entity and erode the emerging trust in the Open Banking ecosystem. These respondents typically felt that a longer membership commitment would provide greater security for the Future Entity and allow it to better plan its strategy. We also heard that the ability of the CMA9 to withdraw from the Future Entity and/or restrict its available funding could affect its independence.



- 162. One respondent suggested that a CMA9 member should only be able to withdraw its membership of the Future Entity with the prior consent of a regulator or other supervising body.
- 163. One respondent felt that the CMA could impose a levy on the CMA9 if they withdrew before the Future Entity's operating model became self-sustainable.

#### *Cost sharing*

- 164. It was not clear from the responses received that there was particular concern over non-CMA9 account providers being able to 'free ride'.
- 165. One respondent told us that some non-CMA9 account providers had benefited from the Directory services and support desk whilst only paying a nominal contribution.
- 166. Another respondent suggested that non-CMA9 account providers should be incentivised by the benefits conferred by membership to contribute towards the funding of the Future Entity. They believed that the Chair of the Future Entity should seek to enhance these benefits over time.
- 167. One respondent told us that it believed that non-CMA9 account providers contributed a significant proportion of OBIE's income and it was wrong to suggest that they did not make an appropriate contribution.

#### *Future projects*

- 168. Respondents broadly agreed that the Future Entity could support future 'open' projects. We heard that the Future Entity should be able to evolve to meet the future needs of the ecosystem participants. However, there were differences of opinion over whether this meant that the Future Entity should be specifically designed to be a suitable vehicle for this implementation or if it should simply be adaptable to change.
- 169. Several respondents told us that it was premature to discuss the role of the Future Entity as a vehicle for implementing the FCA's Open Finance and BEIS' Smart Data initiatives.
- 170. Some respondents expressed scepticism that the Future Entity would be a suitable vehicle for the implementation of other 'open' projects. One respondent argued that other initiatives required their own focus and must meet very specific needs. We also heard that the proposed composition of the Board of the Future Entity was not representative of the broader financial services industry.

171. One respondent told us that the Future Entity should not be formed until after the legislative framework for the FCA's Open Finance and BEIS' Smart Data initiatives were more developed. Another respondent told us that it could be challenging managing an entity with responsibility for managing existing operational responsibilities as well as large, future initiatives.

#### *Payment systems*

172. Respondents were divided on this issue.
173. Many respondents told us that account information and payment initiation services were inextricably linked from a technology and knowledge perspective. We heard that separate schemes would increase the administrative burden and complexity of the ecosystem. One respondent told us that there could be a disproportionate burden put on TPPs offering both AIS and PIS services which were interlinked. Several respondents argued that separating the maintenance and development of these services would adversely impact their compatibility in the future and create a disproportionate regulatory framework which risked stifling innovation.
174. Other respondents stressed that there were significant differences between payments messaging standards and API customer experience standards, but there could be cooperation on technical and customer experience standards.
175. Some respondents argued that current schemes like Faster Payments should be evolved instead of creating new schemes.

#### *CMA view*

176. **As set out in the section above headed 'adequately resourced', in our view, the move towards a broadly-based and sustainable funding model will help to secure the long-term future of Open Banking and will also ensure that all participants contribute appropriately to reflect the benefits generated by the Future Entity. Further, the CMA9 will have continuing obligations under the Order which will necessitate their ongoing engagement with (and funding of) these aspects of the Future Entity until the establishment of a long-term regulatory framework for Open Banking.**
177. **Throughout this document, we have referred to various developments that may affect the future oversight of Open Banking, such as Open Finance. It is a matter for Government, rather than the CMA, to specify the design of these broader Open API ecosystems.**

178. **Regarding payments, the interbank payment services enabled by Open Banking could grow significantly, reducing the share of payments made using debit and credit cards. As noted above, it is possible that Open Banking payments may play a part in NPA, although it is too early to determine this. We therefore consider that the Future Entity should encompass both data sharing and account access for the purpose of initiating payments.**

### *Monitoring*

179. In the consultation, we asked about five issues related to the future monitoring arrangements:
- (a) Whether the Future Entity could, with appropriate governance, be given responsibility for monitoring the ongoing compliance of the CMA9 with the Order.
  - (b) The appropriate entity to be given responsibility for ecosystem monitoring.
  - (c) Whether an independent professional services firm (such as a monitoring trustee) should be appointed to monitor compliance.
  - (d) Whether the entity responsible for monitoring compliance should perform an initial screening of suggestions that ASPSPs were non-compliant or if this function should this reside with the CMA's enforcement function.
  - (e) Whether the FCA's current monitoring activities would be an effective substitute for the activities of the Implementation Trustee's monitoring function.
  - (f) Whether there any other monitoring and compliance issues of which the CMA should be aware.
180. We set out below the key issues raised, followed by our own conclusions at the end of the section.

### *Suitability of the Future Entity to undertake compliance monitoring*

181. Respondents had differing views on whether the Future Entity should be given responsibility for undertaking compliance monitoring.
182. Many respondents expressed concern that the Future Entity would not be sufficiently independent from its members to be charged with monitoring their compliance. Some respondents argued that there was no legal basis for the

Future Entity to have responsibility for compliance monitoring or sanctioning members for non-compliance with the Order.

183. In contrast, several respondents stressed that the Future Entity could be given the role of providing data on ecosystem participants to an independent compliance monitoring body. One respondent claimed that a Future Entity should undertake compliance monitoring, however, there were concerns that the proposal by UK Finance would be unable to address serious breaches.

#### *Responsibility for ecosystem monitoring*

184. We did not receive clear responses to the question of which entity should carry out ecosystem monitoring. One respondent told us that the Implementation Trustee function was best placed to determine requirements for ecosystem monitoring. Another respondent told us that retaining the responsibility for overseeing compliance monitoring within the Future Entity may lead to a compliance driven approach rather than one based on innovation.

#### *Monitoring Trustee*

185. The majority of respondents believed that it would not be appropriate to appoint an independent professional services firm to monitor compliance, as this compliance monitoring function could not be readily outsourced due to a lack of suitable firms.
186. Two respondents told us that the current monitoring function would have built up a large amount of expertise and appointing a new firm to undertake this role would risk re-establishing this process from scratch.
187. One respondent told us that it was concerned that many professional service firms would not be independent, because they would have a relationship with at least one of the members of the CMA9.

#### *Initial compliance screening*

188. We did not receive many responses to this question. Two respondents told us that the entity responsible for monitoring compliance (rather than the CMA) should perform this role.

### *Role of the FCA*

- 189. Respondents provided a wide range of views on whether the FCA would be an effective substitute for the activities of the Implementation Trustee's monitoring function.
- 190. Several respondents expressed concerns that the FCA had insufficient monitoring powers. However, other respondents suggested that the FCA was the most suitable body to perform this role. Several respondents underlined that it already had oversight of Open Banking under the Payment Services Regulations 2017 and was therefore best placed to have a supervisory and enforcement mandate.

### *Other monitoring and compliance issues*

- 191. Three respondents argued that the most efficient, appropriate and proportionate option would be for the CMA9 to self-report any breaches of the Order.
- 192. One respondent said that there must be regard to costs and that the appointment of a monitoring trustee at this stage would be onerous and disproportionate.
- 193. Another respondent suggested that the CMA should consider whether annual compliance statements, where the firms attest to compliance with a specific remedy, would be appropriate.

### ***CMA view***

- 194. **The Order provides for the CMA to carry out monitoring of compliance with the ongoing requirements of the Order, including information gathering mechanisms, the ability to issue directions with regard to Order-related activities, and a requirement for the CMA9 to provide compliance statements to the CMA. The CMA is able to seek enforcement of the ongoing requirements of the Order through issuing directions and ultimately launching court proceedings. Throughout the implementation phase of the Open Banking remedy, monitoring of compliance with the Order has also been a responsibility of the Implementation Trustee. The Implementation Trustee has created a separate monitoring function within OBIE (the Office of the Trustee), which has been closely monitoring the CMA9's conformance with the open banking standards, escalating issues to the CMA for enforcement where necessary.**

195. In our view, prior to the establishment of a long-term regulatory framework for Open Banking, the most effective approach for ensuring continued high levels of compliance with the Order is to maintain a dedicated monitoring function supported by the Future Entity. This will ensure that the staff and assets responsible for monitoring existing standards can draw on the support of the staff and assets responsible for developing Open Banking beyond the scope of the Order. This is particularly important for the monitoring of existing standards where the current Office of the Trustee draws on the wider resources of OBIE, particularly around gathering and processing data from the ecosystem. The monitoring team will report to the CMA to enable the CMA to ensure ongoing compliance with the Order. As part of these arrangements, the CMA will also consider whether there is an ongoing need for an Implementation Trustee (and how the Implementation Trustee will engage with the Board of the Future Entity) to perform the functions set out in the Order and will liaise with the Joint Regulatory Oversight Committee in this regard.
196. We understand that the Office of the Trustee has developed analytical tools which are particularly well-suited to monitoring the Open Banking ecosystem and which are materially different to those typically used by other professional services firms. Examples include differentiating between APIs for different types of services (such as account information and payment initiation) and collecting data at endpoint level. The information collected by OBIE and the Office of the Trustee also includes independent third-party data provided by firms who monitor API performance and TPPs themselves and it is anticipated that these sources of data may become more important in the future. This means that conclusions currently drawn by the Office of the Trustee using its existing monitoring approach are more likely to reflect the experience of consumers and service providers. Therefore, we do not think that professional services firms would be best placed to monitor ongoing compliance with the Order. For these reasons, we also think that it is appropriate for the monitoring team (rather than the CMA) to perform an initial screening of non-compliance. The monitoring team will then provide this data to the CMA for assessment.
197. To make sure that the CMA is able to effectively ensure ongoing compliance with the Order:
- (a) the monitoring team should be appropriately ringfenced from the wider organisation and the team's remuneration and other incentives should not be linked to the performance outcomes of the Future Entity;

- (b) the CMA will specify the information it requires from the monitoring team; and**
  - (c) the CMA may choose to replace the Implementation Trustee with a monitoring trustee, who would be responsible for overseeing the monitoring arrangements conducted by the monitoring function within the Future Entity and report to the CMA on the CMA9's ongoing compliance with the Order.**
- 198. While this approach would result in a degree of ongoing cost for the CMA9, we expect this to be modest when compared with the current costs of OBIE or the likely future costs of the Future Entity.**
- 199. We would expect the Future Entity's constitutional documents to include a requirement to use utmost endeavours to support the work of the monitoring function, providing information and resources where necessary.**
- 200. Following the establishment of a long-term regulatory framework for Open Banking, the CMA, in consultation with the Joint Regulatory Oversight Committee, will review the effectiveness of the monitoring arrangements outlined above to determine how the ongoing compliance with the Order should be monitored going forward. The CMA will take into account any broader review of the extent of the continuing obligations under the Order that the CMA may have undertaken.**
- 201. In addition to monitoring activity related to the Order, the Future Entity should also consider undertaking wider monitoring of the ecosystem to inform itself and others of important developments and to ensure that any new standards are effectively developed and maintained. This would allow the Future Entity to properly understand the continued development of Open Banking and related areas and ensure that it is best able to facilitate Open API environments for the benefit of all end users. There are also likely to be benefits from the Future Entity publishing many of these reports, both to improve the levels of transparency but equally to inform the wider ecosystem and public. We consider that it will be for the Board of the Future Entity and the Joint Regulatory Oversight Committee to determine an appropriate monitoring function for non-Order related activity.**

#### *Transitional arrangements*

- 202. In the consultation, we asked about six issues related to how the transition from OBIE to the Future Entity should be managed:**

- (a) Whether specific measures are needed to mitigate the risk that OBIE's services are interrupted or disrupted during the transition process.
  - (b) The adequacy of the system for monitoring the ecosystem's performance during the transition process.
  - (c) The appropriate body to oversee the transition process.
  - (d) Whether we could have confidence that the remaining deliverables from the Roadmap are completed.
  - (e) Whether it would be desirable to extend the remit of any new organisation to succeed OBIE to include additional development work.
  - (f) The adequacy of the overall transitional arrangements and other issues that might be relevant.
203. We set out below the key issues raised, followed by our own conclusions at the end of the section.

*Continuity risk*

204. Several respondents believed that the risk of disruption to ongoing services was small and that it would be the responsibility of the Implementation Trustee and the body responsible for transition to ensure that OBIE's ongoing services are unaffected.
205. One respondent proposed that an interim Chair is appointed as part of the Transition Group to oversee the appointment of the Board of the Future Entity, including the industry representatives, the independent NEDs and the future Chair.
206. Many other respondents felt that specific measures were needed to ensure the continuity of OBIE's ongoing services, including:
- (a) keeping the existing OBIE fully funded and operational until the current roadmap had been implemented by the CMA9;
  - (b) establishing arrangements for monitoring the user experience and additional costs borne by SMEs due to barriers in sharing financial information;
  - (c) implementing the transition process in phases; and



(d) empowering the current OBIE Executive Committee to make the decisions which it deems appropriate, subject to appropriate governance, until the transition process is complete.

207. One respondent suggested that it could be helpful for the CMA to have the right to pause or amend the timing of any transitional activity.

#### *Performance monitoring*

208. Several respondents indicated that the Implementation Trustee should continue its monitoring role throughout the transition process. However, other respondents told us that the monitoring of the ecosystem could be transferred independently of the transition state of the Future Entity.

#### *Responsibility for oversight*

209. Several respondents told us that oversight of the transition process would, primarily, be the responsibility of the body responsible for transition. One respondent told us that the CMA should ultimately be responsible for signing off on the establishment of the Future Entity.

#### *Completion risk*

210. Respondents were divided on whether the remaining items in the Roadmap ought to be completed as a prerequisite to the transition process.
211. Several respondents believed that the transition to a new Future Entity should not be delayed until the final Roadmap is completed. Generally speaking, they felt that the Future Entity would be able to oversee the completion of any residual items. One respondent told us that it expected OBIE to have completed all activity relating to standards and defining Roadmap outcomes by the time the transition from OBIE to the Future Entity was due to be completed.
212. Several other respondents told us that the current Roadmap should be prioritised over the establishment of a successor body. One respondent told us that implementing the transition process before the residual part of the Order was complete would stall some developments which were key for the mass adoption of Open Banking. Another respondent suggested that completion of the Roadmap should be a prerequisite to any reduction in the CMA9's funding contribution.

### *Scope of transitional arrangements*

- 213. A number of respondents suggested that the remit of any new organisation should not be extended to include additional development work that is beyond the scope of the Order.
- 214. One respondent told us that a Transition Steering Group should be established to be responsible for agreeing any development beyond the scope of the Order. One respondent suggested that this Transition Steering Group should include TPP and end-user representation.
- 215. Several respondents told us that any transitional arrangements must take into account a broad set of stakeholder interests, including consumer representation and representation from TPPs.

### *Other transitional issues*

- 216. One respondent suggested that a new Future Entity should not be formed until after the legislative framework for other 'open' initiatives had been completed.
- 217. Another respondent claimed that there was a strong case for transforming OBIE to meet the needs of other 'open' initiatives, instead of establishing a new entity with additional costs and the risk of losing key personnel in the process.

### *CMA view*

- 218. **OBIE will be responsible for preparing its ongoing operations, staff and assets for transition (including those staff and assets necessary to maintain those requirements under the Order which will continue following completion of the Roadmap), planning and executing the transition, and the solvent and orderly winding up of OBL following transition (if the operations, staff and assets of OBIE are transferred to a new organisation). The execution of transition will only commence upon consent of the CMA. Consent shall only be provided when the CMA is satisfied, on advice from OBIE and the Implementation Trustee, with the terms of such transition, that adequate preparations for transition have been made, and that OBIE will transition to a financially stable and well governed entity. To enable the CMA to consent to transition, OBIE should regularly engage with the CMA at key points during the transition planning process. In turn, the CMA will work jointly with the Joint Regulatory Oversight Committee on the transition process.**

219. **We expect OBIE to develop a detailed plan for transition and an appropriate governance process for the planning and execution of transition, which should include consultation with industry and other key stakeholders, including consumer and SME representatives. We consider it essential that the arrangements that govern the transition to the Future Entity must not adversely impact upon the existing activities of OBIE in completing the Roadmap or put at risk the ongoing performance and maintenance of Open Banking. While planning and preparation for the transition can and should start prior to the completion of the implementation phase, formal transition itself will not begin until the Roadmap is completed. We would, however, support the establishment of the Future Entity in ‘shadow’ form to enable the smooth transition from OBIE to the Future Entity in due course.**
220. **The Joint Regulatory Oversight Committee will oversee the establishment of the Future Entity. This will include working with industry and other key stakeholders to determine an appropriate structure for the Future Entity and considering the implications of that structure, if any, for the Future Entity’s funding and Board composition.**

## Glossary

Acronym	Term	Meaning
AEC	Adverse Effect on Competition	When a feature, or combination of features, of a market restricts or distorts competition in connection with the supply or acquisition of a good or service.
AIS	Account Information Service	An online service which provides consolidated information on payment accounts held by a payment service user with payment service providers.
AISP	Account Information Service Provider	A provider of Account Information Services.
API	Application Programming Interface	A set of routines, protocols and tools for building software applications which specify how software components should interact.
ASPSP	Account Servicing Payment Service Provider	Provides and maintains a payment account for a payer as defined by the Payment Services Regulations 2017 and, in the context of the Open Banking Ecosystem, publishes Read/Write APIs to permit, with customer consent, payments initiated by third party providers and/or make their customers' account transaction data available to third party providers via their API end points.
BEIS	Department for Business, Energy and Industrial Strategy	Ministerial department of the UK government responsible for business, energy and industrial strategy in the UK
CMA9		The nine largest banks and building societies in Great Britain and Northern Ireland, based on the volume of personal and business current accounts, namely AIG Group UK (trading as First Trust Bank in Northern Ireland); Bank of Ireland (UK), Barclays Bank plc; HSBC Group; Lloyds Banking Group plc; Nationwide Building Society; Northern Bank Limited (trading as Dankse Bank); The Royal Bank of Scotland Group plc (in Great Britain and Northern Ireland); and Santander.

	Directory	A 'whitelist' of participants able to operate in the Open Banking Ecosystem.
FCA	Financial Conduct Authority	Financial regulatory body in the UK.
FDATA	Financial Data and Technology Association	Not-for-profit association for financial services companies operating in Open Banking and Open Finance.
	Future Entity	A not-for-profit private company limited by guarantee with the purpose of succeeding OBIE.
HMRC	HM Revenue and Customs	Non-ministerial department of the UK government responsible for the collection of taxes, the payment of some forms of state support, the administration of other regulatory regimes, including the national minimum wage, and the issuance of national insurance numbers.
HMT	HM Treasury	Ministerial department of the UK government responsible for developing and executing the government's public finance policy and economic policy.
IESG	Implementation Entity Steering Group	Steering group which includes the Implementation Trustee, end user representatives and the CMA9 amongst other members and advises the Implementation Trustee on the implementation of the Roadmap.
MIR	Market Investigation Reference	A reference to the CMA to conduct a market investigation in a specified market.
	Implementation Trustee	Means the Director and Chair of Open Banking Limited.
NED	Non-Executive Director	Member of the Board of Directors of a company or organisation but not a member of the Executive management team.
NPA	New Payments Architecture	A vision for the future development of the UK's shared retail payment infrastructure.
OBIE	Open Banking Implementation Entity	The programme implementation entity with its primary purpose of delivering an Open Banking service in the UK by providing the resources and expertise to facilitate the delivery of the requirements set out in the Order.

OBL	Open Banking Limited	OBIE is the trading name of OBL.
	Participant Groups	Group bringing together key stakeholders around a common interest to create proposals for further enhancements.
Order	Retail Banking Market Investigation Order 2017	The legal order implementing the reforms set out in the CMA's Retail Banking Market Investigation Final Report.
PIS	Payment Initiation Services	An online service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider.
PISP	Payment Initiation Service Provider	A provider of payment initiation services.
PSD2	Second EU Payments Services Directive 2015/2366	An EU Directive which sets requirements for firms that provide payment services. In the UK, PSD2 is largely implemented through the Payment Services Regulations 2017.
PSR	Payment Systems Regulator	Regulator of payment systems in the UK.
	Payment Services Regulations 2017	Implement PSD2 in the UK and require all payment services providers to enable data sharing by customers but, unlike the Order which applies just to the CMA9, do not stipulate the use of common and open API standards. Most banks and building societies providing current accounts have adopted the open banking standards in order to comply with the Payment Services Regulations 2017.
	Roadmap	The agreed timetable and project plan published by the CMA on 15 May 2020.
RTS	Regulatory Technical Standards	A set of technical compliance standards developed by the European Banking Authority.
SEPA	Single Euro Payments Area	A payment-integration initiative of the European Union for simplification of bank transfers denominated in Euro.
SME	Small and Medium-sized Enterprise	Businesses with less than 250 employees and an annual turnover under £50 million.
TPP	Third Party Provider	Provider of Open Banking services.

	UK Finance	A trade association for the UK banking and financial services sector.
VRP	Variable Recurring Payment	A form of payment instruction that can be set up and used to make a series of future payments.