

CMA Consultation on Future Open Banking Model

Initial response from the Emerging Payments Association, March 2021

Introduction

There is much to be welcomed in the UK Finance report on the future direction of Open Banking in the UK, and opportunities overseas, and we are pleased to have the opportunity to feed in our members' views to the CMA as to the future direction of this important area. It is important to note that whilst agreeing with many of the recommendations set out by UK Finance, a number of our members felt that some of the initial discussions on Governance and representation do not adequately take account of our view of future priorities.

The Emerging Payments Association's (EPA's) membership represents a rather broad church, including not only banks and traditional payment institutions, but also many Fintech players taking advantage of the ecosystem that OBIE has engendered and the Regtech community providing supporting services to both Fintechs and incumbents. We will provide a full response to the 30 specific questions raised in the consultation when we have had the chance to consult a broader cross-section of our members but, as requested, we are pleased to provide a higher-level overview response to the key public policy issues flagged within your published timeframe.

Backdrop, to Consultation and Initial Considerations on Scope

The consultation builds upon the work carried out over the last year by UK Finance, and covers in turn the requirements of: 1) Independent & Accountable Leadership; 2) Adequate resources for function; 3) Consumer Representation; 4) Sustainability & Adaptability; and, 5) Current and Transitional Monitoring Arrangements.

In discussion with members, it was widely felt that issues surrounding the potential scope of the Future Entity are an important precursor to agreeing the right leadership and governance model. Whilst it may be unrealistic to answer all of the questions regarding its future scope before agreeing leadership, it must be ensured that the leadership and governance model can flex and adapt as the scope of the entity expands (i.e. it is not too rigid and set in stone).

Should the Future Entity expand its scope to considerations of Open Finance and beyond into Smart Data – and this was viewed as almost being a rhetorical question – then the governance and funding models, the oversight and monitoring, and indeed the stakeholders could change dramatically. As the Kalifa Review into Fintech recently concluded:

“The Government needs to facilitate (or, where appropriate, mandate) the sharing of data not just within sectors (such as Open Banking), but also between sectors. ...As part of its Smart Data initiative, BEIS has brought together a cross-sector working group – which is welcome – but it focusses on only five specific existing initiatives within communications, energy and finance, and we need to ensure that the interests of the Fintech community are taken into account.”

Whilst we await the Treasury's response to the Kalifa Review, it is clear that much value is seen within the Fintech and supporting Regtech sectors to take advantage of the UK's leadership. This is not only true for the better functioning of the UK's domestic market, it is also seen as a critical area where UK Plc can export expertise, in Banking or other future 'open' sectors, developed in a benign

environment, supported by the value-added services currently being offered by OBIE and which EPA members felt could be expanded into the Future Entity.

EPA Members believe that the marketplace in Open Banking has been a resounding success in the UK, with roughly half of all European participants being active in the UK. Whilst the UK could always be assumed to be a key player in European adoption of financial innovation, there is no doubt that the OBIE has played a crucial part in encouraging the burgeoning market to flourish. As the consultation questions themselves note, *“The OBIE has performed functions and supplied services which while not stipulated in the Order have, in the opinion of many parties, proved fundamental to maintaining a well-functioning ecosystem.”*

Members were universally of the opinion that these value-added services provided by OBIE were of great value to the development of the ecosystem, and members in particular cited the ‘hand-holding’ of new entrants as a key feature that had allowed the marketplace to flourish. The subsequent question, *“Can the CMA and other stakeholders be confident that these will be maintained?”* therefore should perhaps read *“How can the CMA and other stakeholders ensure that these will be maintained (and extended into other ‘open’ sectors)?”*

In addition to the support services the OBIE has also led the development of a set of technical standards for open banking that have served the industry incredibly well. In fact, the UK standards have often been seen as global best practice and used as a baseline in a number of other markets around the world. Whilst the standards have matured during the implementation, they will need to continue to develop for the good of the ecosystem and all of its users. The drivers for ongoing change in the standards may come from a number of different directions, for example:

- Ongoing enhancements to the security standards based upon global best practice
- Market-driven requirements to unlock richer functionality and greater potential
- Potential future regulatory changes, including extensions to new sectors, such as open finance, open pensions etc.

The UK has developed a leading position globally in the development of open banking and open data standards and the EPA believes it is important that the future entity determines the right model to continue to evolve the standards in line with the needs of the current and future ecosystem.

Considerations for alternative funding sources, development of wider ‘open’ initiatives

Though far from the CMA’s envisaged output from Open Banking, other ‘open’ initiatives have spun out or been influenced by OBIE’s approach, including Open Energy. Due to the entirely separate public policy drivers towards the Green Economy, Open Energy has been supported and partially funded by Innovate UK, part of the Government’s Research funding. Whilst this may not necessarily be as appropriate in other ‘open’ services that the Future Entity may look to deliver, it is worthy of note given the CMA’s operation within this wider public policy sphere.

Energy may in itself be seen as a sector too far for the Future Entity, but closer to the Open Banking model envisaged by UK Finance, Open Finance and Smart Data clearly have a broader set of stakeholders with whom to engage. For example, commentary on the forthcoming Pensions Dashboard (and coverage in the Pensions Bill) occasionally make parallels with an ‘Open Pensions’ concept, and from discussions with EPA members, one could easily envisage a CMA8 (or some such) in Pensions & Insurance, a CMA6 in Telecommunications, etcetera picking up the funding slack from the existing Banking CMA9 as this tapers down over the next few years.

If one accepts the hypothesis that the additional support, especially to new entrants, that has been made available from OBIE has helped to engender a more dynamic market in Open Banking, then from an HM Government perspective it surely should be explored as to the extent this could translate into other sector verticals. A Future Entity which can offer similar added value services and 'hand holding' to new entrants in, say, an Open Pensions marketplace, could enable a thriving market to develop in the UK, allowing a thousand flowers to bloom in each nascent 'open' sector vertical.

Alongside the different set of private sector stakeholders in these other 'open *.*', some of these new verticals introduce new regulators, responsible Government Departments, and sector teams within the CMA itself. During the transition phase, the CMA should work with these broader communities to explore how best to mirror the success of the Open Banking ecosystem in the UK, which is rightly lauded globally, into these other verticals.

Having established the principal of an Entity helping to spur the development of a new market through the adoption of standards and value-added services, the CMA should give serious consideration to how best to cultivate this environment in other 'open' sectors.

It appears that there should be a bright outlook for a future entity to support the ongoing development of open banking and the development of open data initiatives for the benefit of UK plc. However, one area that remains unclear through the Open Futures recommendation is the funding of the entity during the transition period. There is a clear and obvious risk that the interim funding could become an uncertainty that undermines the significant process made so far. The EPA recognises there are a number of options to cover any shortfall in funding during the transition period, and whilst we do not propose a solution, we do suggest that this is a key issue that needs coordinated resolution in the short term for any transition to be successful.

Implications for Future Entity in Banking

The consultation questions, and UK Finance report to which they relate, rightly notes the inevitable issue that the CMA9 would wish to taper off their expenditure into OBIE and its successor, given the free-rider concerns. Likewise, the now established cohort of TPPs and any new entrants, would naturally like to retain access to the additional value they enjoy from OBIE services, but which they may be averse, or unable, to fund themselves.

Whether Government believes such funds should continue to be sourced from incumbent players, as with CMA9, or supported more directly, as with Open Energy's Innovate UK funding, members also noted this week's news of HMRC itself going live to take advantage of Open Banking services. As the Future Entity transitions to a new state whereby it starts expansion of services into Open Finance and Smart Data (to stick to the two specifics cited in the consultation and UK Finance's report), other Government Departments may start to realise additional value in and of themselves, as with HMRC this week with Open Banking. Logically one could see DWP's wider policy brief benefiting from an Open Pensions model, and explicitly Smart Data is within the purview of BEIS (alongside Energy).

Until such questions of scope and scale are better understood, it is perhaps premature to consider the composition and voting rights of a Board.

Longer term Commercial Activities from the Future Entity(ies)

The Future Entity, as set out in the UK Finance report and on which we are invited to comment in the consultation, has the potential to evolve, after the transition period, into a commercial entity in its own right, sustaining itself on the fee earning services that it might develop. Some members noted that a commercial imperative and motive for the Future Entity model would help incentivise

and drive the UK's exploitation of national leadership in the initial Open Banking phase into a broader open data space. Whilst not mutually exclusive, other members, however, also had concerns that a single Future Entity, spanning a range of 'open' services, could ironically lead to the CMA encouraging the formation of a monopolistic commercial player, going beyond the core function of setting standards.

The EPA would encourage either an open consultation during the transition phase, or a focused review by the future advisory board to determine which services should be provided by the future entity and how this should be done to ensure alignment with the key principles of the CMA.

Summary

The Emerging Payments Association welcomes the vision to take Open Banking's initial Implementation into a Future model where the vibrant UK market can expand both internationally and into new sectors. Our members agree with Kalifa that *"Open Finance should inter-operate with other open data initiatives in the UK"* and that, therefore, the governance model for the Future Entity should be assessed during the transition period to ascertain how quickly other 'open' sector verticals can be brought to bear, whether with private support via sectoral CMAs 5/6/7 or more direct Government support. Having established global leadership in the gold standard sectors of Banking and Payments, we believe that the foundations laid by OBIE in nurturing a new marketplace can be effectively exploited by our leading RegTech businesses in other sectors and jurisdictions, and the EPA look forward to working with Government and Regulators to see this through.

Emerging Payments Association, March 2021

Note

As the EPA's membership includes a wide range of companies from across the payments value chain, and diverse viewpoints across all job roles, this response cannot and does not claim to represent the views of all members fully. We are grateful to the EPA's members and the experts they have recommended to us, who have contributed to this response which has been drafted based on interviews and collaboration with them by Andrew Churchill, one of the EPA's longest standing advisors and with the additional support of the Project Open Banking Team led by Richard Jones at Eversheds Sutherland and Huw Davies at Ozone API.