

The future oversight of the CMA's Open Banking remedies

We thank the Competition and Markets Authority (CMA) for the opportunity to input into [the future oversight of the CMA's Open Banking remedies consultation](#). You can find below techUK's response.

About techUK

techUK represents the companies and technologies that are defining today the world that we will live in tomorrow. The tech industry is creating jobs and growth across the UK. More than 850 companies are members of techUK. Collectively they employ more than 700,000 people, about half of all tech sector jobs in the UK. These companies range from leading FTSE 100 companies to new innovative start-ups. The majority of our members are small and medium sized businesses.

Preliminary remarks

The members of techUK are broadly in favour of the concepts behind Open Banking and Open Finance, as defined in the Financial Conduct Authority's (FCA) Call for Input. A customer's financial situation is much more than just transactions history, real-time account balances or loan payment history. To fulfil the ambitions of Open Banking, customers, need to be able to securely share a wider pool of data including, for example, pensions, insurance, and mortgages. Therefore, for customers to benefit the most from both their data and their investments, there is a need to extend the scope of Open Banking.

Open Banking has made significant headway but has been slow to reach a wider market. According to the Open Banking Implementation Entity (OBIE), 200 million monthly calls have originated from the Open Banking push which has seen the banks connect to 204 active and regulated third party providers (TPPs). We clearly see that there is an appetite for the new and improved services to be unlocked through Open Data initiatives.

In order to maximise the benefits from financial data, the UK needs a system which ensures consumer protection, guarantees system resilience and delivers interoperability. To achieve this, techUK calls for the development of an overarching strategy for data sharing over the longer term and for regulators across sectors to work with government on this very important point, particularly the HM Treasury, BEIS, the Financial Conduct Authority and the Competition and Markets Authority.

The importance of securing the future of Open Banking

The Open Banking Implementation Entity has enabled Open Banking to successfully take off in the United Kingdom, which has been a pioneer in Europe and a model for other jurisdictions across the world. With 3 million users and new use cases being developed – including HMRC which began using Open Banking for tax payments, now is not the time for any uncertainty for participants of the Open Banking ecosystem.

Whilst we note the risks associated with a long transition, a rushed one or any uncertainty on the future of Open Banking could put at risk an entire ecosystem and stifle innovation and competition. It would send the wrong message to the UK's vibrant fintech community.

A new body, its remit and governance

It is clear that the OBIE has had a crucial role in making Open Banking a reality, through monitoring, standards and ecosystem building. We also see the value in Open Data initiatives, including the recent work from the Financial Conduct Authority on Open Finance and the work from BEIS on Smart Data.

We therefore call for more coordination and collaboration between all parties involved including the CMA, HM Treasury, the FCA and BEIS on the UK strategy for Open Data initiatives. We will need entities to deliver on those initiatives, but there is a risk of redundancy, confusion and inefficiency if a myriad of new bodies is set up.

In our view, there needs to be top-level of commonly agreed principles which underpin data sharing, as there are a number of common issues to do with security and the ethical use of data, which arise no matter what the sector. These general principles should govern the activities of players across the board and protect the interests of consumers. This would give clarity to consumers, generate trust and provide certainty for the industry. Companies cannot be faced with multiple different regimes overseen by different sector-based regulatory bodies.

Ethical issues arise mainly around:

- Consent*
- Use and re-use of data*
- Use of AI and potentials for bias*

We believe that a tiered level of oversight will be required to ensure the success of Open Banking, Open Finance, Smart Data – and any other initiative towards Open Data, which may come in the future. At the apex should be a body which devises and oversees the aims, high-level principles and forward planning of the UK's data strategy. Such a governance body should be independent, transparent and representative, involving stakeholders from across different market sectors as well as government and market sector regulators.

Underneath this body, different sectors will require specific sector-based rules and a body to devise and enforce these – as exists at present. The Smart Data Function suggested by BEIS could be one of these bodies with specific remit for the regulated industries named in the Smart Data Review. All these bodies must however operate according to the principles devised by the top-tier governance body.

techUK is not in favour of fragmenting responsibility for the issues raised and work is required to establish a digital economy across multiple agencies. As stated above, regulation / governance, which are primarily sector-based, will cease to be sufficient in a data-sharing economy. Oversight structures must be designed from the outset to avoid overlap in the long term.

We suggest there are at least four distinct levels of function to be considered: (i) high-level policy and long-term strategy (ii) standards and security (iii) technical implementation, interoperability and (iv) UK / international compatibility. Detailed consideration should be given as to how these various functions should be addressed over the long-term – as they will take time to emerge and will span multiple markets. It is essential that we do not set up bodies for short term projects which have different remits and/or overlap with other bodies. Clarity on overall strategies will be paramount, as will clear differentiation of functions.

We note the possibility of distinct overlap and duplication of effort, concerning the 'long-term governance of Smart Data' functions described, with other existing regulatory bodies in particular ICO, CMA, FCA. techUK commends the UK government's effort to consider and minimise the risk in this regard by setting up the Digital Regulation Cooperation Forum aimed at increasing collaboration across regulators. However, we welcome more information on the objectives of this Forum and how it will be operationalised.

Whilst there is a clear link between Open Banking and Open Finance, the question is how we will guarantee that the new entity is properly set up and able to scale to meet the requirements for Open Finance. This need to be thought through from the outset. There is a risk that the new body would not be suited for Open Finance or that another body would set up to cover Open Finance.

It is not clear what relationship the Smart Data function would have with the OBIE successor. We call for the CMA to work with BEIS and the FCA to ensure coordination of the extension of Open Banking into other financial services areas and the implementation of Smart Data. Oversight/governance of these two operations cannot be fragmented.

We should look at lessons learnt and guidelines from other bodies which have successfully proved to be independently-led and accountable as well as dedicated to serving the interests of end-users consumers and SMEs, such as Pay.UK with regard to the payments-related elements of Open Banking and Open Finance.

If we do not get governance right, there is substantial risk to the continued success of Open Banking in the UK. Particularly as there will be key decisions to be taken in the months and years to come which cannot be settled now.

A more equitable funding model

The ecosystem is more mature and whilst the initial funding model has enabled Open Banking to kick start in the UK, it is indeed the right approach that all parties contribute to the future of Open Banking and other Open Data initiatives. We will make Open Data initiatives a success if all parties find a common and commercial interest.

For all parties to contribute, it is critical that the fees are fair so that smaller players can keep benefitting from Open Banking and Open Finance and do what they do best: innovate, challenge the current state of play and deliver valuable new services to customers.

It is also why governance is essential if there are some uncertainties around the funding model or some decisions need to be taken at a later date.

Ensuring we agree on a fair funding model is not enough, we need to guarantee that is sustainable and provide enough guarantees for the future of Open Banking and Open Data initiatives in the UK. If the governance and the funding model leave any uncertainties on fairness and long term strategy, we put at risk Open Data initiatives in the UK.

Payments: time to make more progress

Payments has been one of the areas that is the least advanced. Some of the reasons have been around the lack of functionality such as refunds and recurring payments.

As we look for the best structure and set up for a future entity, with key qualities of being independently-led and accountable as well as serving the interests of consumers and SMEs. Pay.UK would seem to be in the best position to lead on payment initiation services.

Pay.UK has independent governance and recognised standards expertise, as the UK payments system operator. It also acts as a market catalyst promoting innovation and competition within the industry. Pay.UK has the right profile to take payment initiation to the next stage and deliver on the ambition set out in the Payments Landscape Review published by HM Treasury in 2020.

Consumer take up

As we consider the setting up of a new body, consumer take up should be considered as a priority as Open Data initiatives will only achieve benefits if it is taken-up by consumers. There is at present little understanding among consumers of the benefits of data sharing and the methods by which they can control the use of their data. Indeed, the extent to which consumers or SMEs can be expected to monitor/control the use of their data is limited. Three key developments therefore are needed:

- *a 'transparency by design' principle, which allows consumers to understand where their data is going and to what uses it is being put;*
- *a concerted communication effort by Government, regulators and the industry to help users recognise the benefits of Open Data;*
- *Government support for the development of consent management tools and/or trusted intermediaries to assist consumers in managing their data.*