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1 October 2020

Dear Tracy-Linn

Re: EMA response to FCA Call for Input: Open Finance

The EMA is the EU trade body representing electronic money issuers and alternative payment service providers. Our members include leading payments and e-commerce businesses worldwide that provide online payments, card-based products, electronic vouchers and mobile payment instruments. They also include a growing number of Payment Initiation Service Providers (PISPs). The EMA sits on OBIE's Implementation Entity Steering Group and participates in European initiatives under the aegis of the Euro Retail Payment Board. A list of current EMA members is provided at the end of this document.

I would be grateful for your consideration of our concerns.

Yours sincerely

Dr Thaer Sabri
Chief Executive Officer
Electronic Money Association

EMA response to consultation

Q1: What action can we take to help ensure the potential of open banking is maximised, for instance to support the development of new open banking services?

At this early stage of open banking's evolution, we consider that the short term priority is for the FCA to assist with driving forward a robust, fit-for-purpose ecosystem so that third-party providers (TPPs) can rely on API interfaces provided by ASPSPs to deliver products and services. In turn, this will enable consumers and businesses to build up confidence in those services in substantial numbers and realise the benefits of open banking.

The continuation and completion of several items in the Final Approved Open Banking Roadmap is key to facilitating the growth of a dynamic, large scale intermediary sector (AIS, and PIS providers, and technical service providers). This is particularly important for the Roadmap items that relate to developing payments functionality, so as to support PIS providers bringing viable propositions to market.

We have summarised below a number of key issues that the FCA could take action to address in order to ensure that the potential of open banking is maximised:

<u>Open Banking Interfaces Availability and Performance</u>

- It is fundamental that open banking APIs are consistently available and stable so that third party providers can rely on those APIs to deliver products and services. It is also imperative that a 'two-tier' API ecosystem does not evolve where open banking API performance and operational resilience are sub-optimal in comparison to ASPSPs commercial API services. The poor performance of ASPSP's open banking API infrastructures for TPPs can already be seen to be providing ASPSPs with an advantage when they decide to provide AIS/PIS services. The ability for ASPSPs to create services based on well performing APIs (or internal services), which are not available to external TPPs, will suppress the TPP ecosystem.
- Where open banking APIs are found to be not performing on par with direct online customer channels, the FCA should take transparent enforcement action, including where necessary revoking an ASPSPs exemption from the contingency mechanism requirement.
- Performance of modified customer interfaces (MCI) (and/or fallback mechanisms) – the natural focus has been on the open banking API ecosystem in the UK, however, as many ASPSPs have opted to develop MCIs for payment accounts the performance and reliability of MCIs will become increasingly important to deliver TPPs services.
- Where an ASPSP's interface to payment accounts is not performing to minimum standards, the FCA should require ASPSPs to improve communications with PSUs in order to increase confidence in open banking services and not rely solely on TPPs to manage PSU's expectations on service quality, which is outside their control.

Improving the scope of OB standards

- Merchant and consumer research conducted by EMA members illustrates that a solution for facilitating customer refunds is imperative to supporting the growth of the PIS ecosystem and e-commerce propositions.
- Variable Repeat Payments (VRP) should be implemented by ASPSPs under PSD2 compliance (following the FCA sandbox evaluation) to enable innovative PIS solutions to emerge.
- Regulatory perimeter –PISPs should be able to access AIS data in order to manage their payment risk even if they don't intend to offer AIS products.
- Convenient and user-friendly customer journeys will play a critical role in driving the adoption of TPP services. Therefore, a number of issues relating to PSU authentication have to be considered and addressed:
    - Current PSU authentication journeys are fragmented and inconsistent, not just between ASPSPs, but even between the same ASPSP's different channels and brands. This creates considerable PSU confusion and ultimately creates a barrier to developing trust in open banking services.
    - PISPs cannot offer innovative products that are adapted for new channels and devices e.g. voice-enabled payments, payments at Point-of-Sale terminals, or payments using a wrist watch - when customer authentication journeys are restricted to the redirection authentication model as is currently the case in the UK.
- The FCA should act to develop rules and guidance enabling AISPs to operate continuous, unattended access to payment accounts, without the need for the PSU to provide authentication to the bank every 90 days,
- The FCA and/or the PSR should formally consult on how confirmation of payee and APP scam Contingent Reimbursement Model (CRM Code) risk screens should be treated in open banking customer journeys.

Improve transparency

- The FCA should provide visibility on ASPSP API exemption status[1]: relying on ASPSPs to self-populate the Open Banking Implementation Entity's Transparency Calendar is ineffective in assisting TPPs to understand the status of various APIs.
- The FCA should consider sharing high-level figures or trends on TPP issues raised with individual ASPSP APIs (e.g. number of submitted NOT005 notifications on a

[1] As provided for in Art 33 (6) of CDR 2018/389 Regulatory Technical Standards for SCA and common and secure open standards of communication

monthly/quarterly basis) with industry, similar to the ranking published on service metrics and incident reports.

Future governance

The future governance model for taking forward the open banking standards and assets (OB Directory, and DMS) once the OBIE has completed its mandate under the CMA Order should be resolved as a matter of urgency so as to provide a degree of certainty to the Open Banking ecosystem.

Q2: We are interested in your views on what open banking teaches us about the potential development of open finance.

The EMA would like to focus on the learnings from two overarching themes which have emerged as open banking has evolved:

Regulation as an enabler, not the driver

The CMA Order and subsequent PSD2 implementation have undoubtedly driven the UK's leading approach in developing open banking to date. But there have been significant challenges to applying a legal framework to an area defined by rapid digital innovation. Firms have had to navigate their way through numerous pieces of legislation, regulatory guidance, opinions, and industry thinking before turning to technical standards and solution implementation. The substantial investment by all participants in the open banking ecosystem over a prolonged period of time cannot be underestimated, and has far exceeded original costs envisaged by regulators. This has to be a key consideration when planning a way forward for open finance.

In addition, regulation as the motivating force has inevitably resulted in a compliance-driven approach to developing open banking technical standards and their implementation. This has slowed the pace of innovation as ASPSP and TPP legislative interpretation, expectations, and requirements have often not been aligned. Data providers must be sufficiently commercially incentivised to provide fully open and functioning access to data. This will only be achieved where the services developed are driven from clear customer and market demand.

Whilst some regulatory incentive may undoubtedly be required to achieve some of the objectives of open finance, the boundaries of the regulation and when it should be applied should be carefully considered so as not to stifle market driven innovation.

Technical standards don't necessarily result in standardised approaches

Open technical standards are undoubtedly important for facilitating market growth in an increasingly networked landscape. However, the UK open banking experience demonstrates that whilst ASPSPs implement the same technical specifications and adhere to common guidelines; variations in execution persist. This leads to increased cost and complexity for TPPs entering the market and ultimately may impact on their ability to scale their operations.

Driving greater choice and innovation in the products and services available to consumers and businesses through open finance can only be achieved if the TPP ecosystem is not curtailed by financial institutions' implementation of the technical standards.

Q3: Do you agree with our definition of open finance?

Yes, we agree with the definition of open finance, but we challenge the assumption that APIs could be the best, and only, method of accessing a broader finance data set (point 3.6). Limiting the scope of open finance to a single technology or approach will immediately limit the possible innovations that could occur as technology evolves.

We also note that in point 3.5, the use of the term 'write' access in the context of APIs has perhaps been misunderstood as the ability of TPPs to present data back to customers. 'Write' access allows third parties to perform an action on behalf of the customer via an API, and the wording of this assumption requires updating.

We suggest that any open finance definition makes access to customer data, and the onward sharing of data, contingent on the customer's explicit consent and instructions, but not on the basis of undertaking the narrow activity of presenting a customer's data to them. [This would also require a change to HMT's definition of AIS for open banking].

Q4: Do you agree with our assessment of the potential benefits of open finance? Are there others?

We agree with the benefits described and anticipate many more to be defined.

Upgrades to banking IT infrastructures that have been made for open banking to support real-time networked access to customer data may accelerate the upgrading of core banking platforms for the UK's largest banks. This process alone may widen the scope of benefits which can be achieved by open finance.

Q5: What can we do to maximise these benefits (given the considerations set out in paragraphs 3.12 to 3.17)?

No comment.

Q6: Is there a natural sequence by which open finance would or should develop by sector?

As discussed in our response to Q1, the EMA considers that the first priority is to ensure the open banking ecosystem is sufficiently developed and robust to enable it to flourish and provide a potential basis for open finance. Thereafter, the logical sequence would be to extend the scope of open banking to include non-payment savings accounts, mortgages, consumer credit. and investments (TISA initiative), and then the work on the Pensions Dashboard.

Nonetheless, we consider that the evolution of open finance should be driven by clear customer and market demand so as to ensure that data providers and TPPs have an incentive to participate, and maximum benefits are achieved for as many consumers and businesses as possible.

Q7: Do you agree with our assessment of the potential risks arising from open finance? Are there others?

As the FCA has noted, the risks identified could apply to any regulated market and exist in the market today; going forwards a more granular risk framework will need to developed in the open finance context. However, we urge the FCA to develop a proportionate and evidence-based approach to developing the risk framework for open finance. Otherwise, there is the possibility that the scope of open finance is too restricted and risk averse to drive greater choice and innovation in the products and services available to consumers and businesses.

Q8: Do you consider that the current regulatory framework would be adequate to capture these risks?

Many of the risks identified with open finance could be mitigated through a regulatory model similar to PSD2. However, bringing open finance under a single overarching PSD2-type regulatory framework to cover all finance sectors may introduce a complexity and burden that could slow the pace of change and ultimately frustrate the objectives of open finance. Regulatory intervention should only be considered where it is found to be necessary.

As discussed in our response to Q17, there would be value in clarifying, revising, and updating the UK's implementation of GDPR in the open finance context. In particular, to ensure that the scope and frequency of data access and transfers support real-time, ongoing, and automated portability.

Q9: What barriers do established firms face in providing access to customer data and what barriers do TPPs face in accessing that data today?

<u>Providing access to data</u>:

As PSD2 implementation has demonstrated, ASPSPs have faced significant cost in developing compliant access interfaces to payment accounts. This has had particular impact on smaller ASPSPs who, as yet, have not seen significant demand for account data from the AISP ecosystem. Indeed, some of our Members have implemented, and now maintain, PSD2 compliant interfaces to payment accounts, and report **no demand** at all for access from TPPs. Having to provide an interface for data access by TPP's where there is no market demand, is a barrier to entry for small innovative financial solutions.

When further developing open finance, consideration must be given to this potential impact on smaller financial institutions and whether the cost borne will result in the anticipated benefits to consumers and businesses.

<u>TPPs' access to data:</u>

TPPs' product propositions, and ultimate value, will only be fully realized by combining multiple financial data sets. As the FCA have identified, the key barriers to developing and scaling TPP propositions is the data provider's willingness to share data, and a standardised mechanism for accessing data (such as APIs). Some of the current challenges experienced by TPPs accessing data are:

- The mixture of different types of interfaces (APIs and MCIs) to access data and the operational complexity and cost this introduces for TPPs in maintaining multiple connections across all data providers,
- Poor stability and performance of PSD2 APIs, when compared to previous ability to screen scrape,
- Data parity between customer interfaces and dedicated interfaces: for example, most APIs don't contain FX pricing information, though they contain all other prices (to allow customers to compare products).

Q10: Do you think the right incentives exist for open finance to develop, or would FCA rules, or any other changes be necessary?

For open finance to develop it is important that compelling customer driven commercial propositions are allowed to develop, and encourage data providers to facilitate standardised access to data. As we discuss above, regulatory intervention may lead to a minimal compliant approach to opening up customer data, which in turn could lead to sub-optimal outcomes for consumers and businesses. However, regulatory incentives may be required to unblock access to data in specific open finance sectors as the opportunities are better understood.

In the first instance, the FCA should use its convening powers to facilitate cross sector evaluation of synergies between data sets and opportunities to repurpose existing APIs within the regulatory sandbox environment. This would help to drive out value-added services which could be developed under open finance and establish if further rules, guidance and or legislation might be useful.

Q11: Do you have views on the feasibility of different types of firms opening up access to customer data to third parties?

The investment made by providers of payment accounts for open banking in upgrading core IT infrastructures to support real-time networked access to data should increase the feasibility of opening up access to additional customer data for open finance initiatives. We acknowledge this does not consider the impact on data providers outside the scope of PSD2, and that some finance sectors will require significant investment to provide access to data and progress with open finance.

Q12: What costs would be involved in doing so? We are interested in views on the desirability and feasibility of developing APIs?

The investment in open banking to develop common standards should reduce the cost of opening up access to a wider set of data for data providers already involved with open banking.

As we set out in our response to Q3 establishing open finance with a technology bias towards API development may frustrate the timescales and outcomes in different financial sectors.

Q13: Do you have views on how the market may develop if some but not all firms opened up to third party access?

If some but not all firms opened up data to third party access, it may be difficult for TPP's to deliver meaningful services to as many end users as possible. In order to deliver the potential benefits of open finance, all parties involved in a financial process may need to participate in the ecosystem, in a consistent manner.

However, the challenges of opening up customer data in different sectors means there is unlikely to be a sudden availability of data from all sources in a standardised manner that might lead to innovative TPP solutions in a given financial process. We recognise that this will be an evolutionary process.

Q14: What functions and common standards are needed to support open finance? How should they be delivered?

We agree with the FCA's Advisory Sub-Group that common data standards and methods for identification, authentication, and communication will be the foundations of an open finance ecosystem.

The tools and infrastructure developed for open banking have the capacity to be extended for open finance, where appropriate. Development and management of common open finance standards will require the oversight of an independent standards body. As described below in our answer to Q16, we consider that the successor organisation to OBIE has the potential to take on this role.

Q15: What role could BEIS' Smart Data Function best play to ensure interoperability and cohesion?

The BEIS Smart Data function should perform a convenor function; bringing together different open data initiatives across multiple sectors. The most valuable gains to consumers and businesses will be when they can compile data from different sectors with ease, including sources of government data. This will require different markets to work together, and as open banking has demonstrated an independent overarching coordinating body is vital.

Q16: To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?

As we set out in our response to Q2, all participants in the open banking ecosystem have invested significant resources in the development of the technical standards, implementing compliant solutions, and bringing new services to end customers. This investment cost has been borne not only by the CMA9 banks funding the Open Banking Implementation Entity and its assets, but also by other participants in the ecosystem. Leveraging this investment by learning from the OBIE processes and building on the OB standards and infrastructure, and retaining the expertise within OBIE is important for all stakeholders.

The tools and infrastructure developed for open banking (and operated by OBIE) have the capacity to be extended for open finance where appropriate, and this could significantly reduce the cost burden of developing open finance. In addition, should competing infrastructure emerge for future open finance initiatives, a level of cost and complexity could be introduced which could act as a barrier to market entry to TPPs requiring access to multiple data sources to provide their services.

However, we recognise that centralised infrastructure, particularly in payments systems, can result in large financial institutions creating an imbalance in the competitive landscape. This is why the future governance and structure of OBIE is of critical importance to the future of open finance. There is a risk that if the successor organisation to OBIE is funded and controlled only by ASPSPs, they would be in a position to influence the competitive landscape, particularly in relation to developing premium/commercial services beyond PSD2, to the possible detriment of the TPP and Technical Service Provider (TSP) ecosystem. At this point in time, there is an opportunity to create a model for further developing open banking technical standards, and supporting services, in a consensus driven environment where all materially interested parties have the opportunity to participate at the level that they choose.

The successor organisation to OBIE should be an independent Standards Authority encompassing broader banking and non-banking financial services ready to achieve 'open finance'. Such a body could be financed equitably from wider participation, drawn from the data supply side of bank, insurance, pension, mortgage and other providers, and the data accessing demand side (existing and new third-party providers - TPPs).

Q17: Do you agree that GDPR alone may not provide a sufficient framework for the development of open finance?

We believe that GDPR does provide the initial basis for open finance but that there would be value in clarifying, revising, and updating the UK's implementation of GDPR in the open finance context. In particular, to ensure that the scope and frequency of data access and transfers support real-time, ongoing and automated portability.

Q18: If so, what other rights and protections are needed? Is the open banking framework the right starting point?

No comment.

Q19: What are the specific ethical issues we need to consider as part of open finance?

The Artificial Intelligence (AI) related risks identified are not unique to open finance and should be addressed in a horizontal fashion across the financial sector with consideration to the impact on open finance.

With reference to customers in vulnerable circumstances, of course all firms, including Electronic Money Issuers (EMIs), will take care to provide protection for vulnerable customers. However, over-emphasising this risk when the open finance framework is in its nascent stages may limit the whole initiative. Indeed, there is a misunderstanding that vulnerable customers don't want to, and can't use digital products. In fact, as the FCA has identified, some groups of vulnerable customers could be some of the biggest beneficiaries of open finance.

Q20: Do you have views on whether the draft principles for open finance will achieve our aim of an effective and interoperable ecosystem?

For open finance to flourish there needs to be a clear set of genuine customer problems and demand for open finance-based solutions. Each financial sector beyond payments – savings, investments, pensions, mortgages, etc; will have to define the use-cases where open finance could deliver value. In order to achieve an effective and interoperable open finance ecosystem, an overarching set of principles is useful. However, all regulators that may be involved in the eventual oversight of an open finance ecosystem would need to be working to a consistent set of principles so that there is coherent treatment of firms across the ecosystem.

With regards to specific principles:

- Principle 3: should also consider the customer's right to revoke consent. Specifically, as it is the TPP 's responsibility to gain consent, they should be the ones through whom the customer revokes consent. The data provider should not play a gatekeeper role in the consent process.
- Principle 5: common and open standards should support the exchange of a maximum available set of data rather than a 'minimum-set' of data. As open banking has shown, if a minimum common set of data approach is taken, by definition, it will limit the data set to the scope of the poorest data source. A 'maximum available' approach would support a much richer data environment being available and allow data providers to participate at a level they are capable of.
- Principle 6: should not promote the possible use of 'schemes' at this stage of open finance's development as schemes tend to restrict participation and access, and can become anti-competitive.

Q21: How should these set of principles be developed? Do you have views on the role the FCA should play?

As discussed in our response to Q20, to be effective, the principles should be supported by all of the regulators who may be involved in the oversight of open finance services. In addition, the principles should be consistent with any wider open data objectives and principles developed by other industry sectors and the government. To this end, the FCA plays a key role in collaborating with the relevant parties (such as the PRA, ICO, Pensions Regulator, BEIS) to develop appropriate principles for open finance.

Q22: Do you have views on whether any elements of the FCA's regulatory framework may constrain the development of open finance? Please provide specific examples.

Please see our responses to Q1, 8, and 9.

List of EMA members as of September 2020:

AAVE LIMITED
Account Technologies
Airbnb Inc
Airwallex (UK) Limited
Allegro Group
American Express
Azimo Limited
Bitstamp
BlaBla Connect UK Ltd
Blackhawk Network Ltd
Boku Inc
CashFlows
Ceevo
Circle
Citadel Commerce UK Ltd
Coinbase
Contis
Corner Banca SA
Crypto.com
Curve
eBay Sarl
ECOMMPAY Limited
Em@ney Plc
Euronet Worldwide Inc
Facebook Payments International Ltd
First Rate Exchange Services Flex-e-card
Flywire
Gemini
Globepay Limited
GoCardless Ltd
Google Payment Ltd
IDT Financial Services Limited Imagor SA
Ixaris Systems Ltd
Modulr FS Europe Limited Moneyhub Financial Technology Ltd MuchBetter
myPOS Europe Limited
Nvayo Limited
OFX
OKTO
One Money Mail Ltd
OpenPayd
Optal
Own.Solutions
Park Card Services Limited
Paydoo Payments UAB Paymentsense
Payoneer
PayPal Europe Ltd
Paysafe Group
Plaid
PPRO Financial Ltd
PPS
Remitly
Revolut
SafeCharge UK Limited
Securiclick Limited
Skrill Limited
Soldo Financial Services Ireland DAC
Stripe
SumUp Limited
Syspay Ltd
Token.io
Transact Payments Limited
TransferMate Global Payments
TransferWise Ltd
TrueLayer Limited
Trustly Group AB
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WEX Europe UK Limited
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