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Dear Kimon

Re: EMA response to [PSR CP21/2 Consultation on delivery and regulation of the New Payments Architecture Q7-14](#)

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. Most EMA members operate as indirect participants of the UK's main payment schemes, although a few are direct participants. 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 - Questions 7-14

Questions related to competition

7. Do you agree with our description in paragraphs 5.7 and 5.8 of how to best promote and facilitate effective competition in the NPA ecosystem? Please explain your response.

Given that it is proposed that Pay.UK act as the sole interface to the CIS provider, we strongly agree with the principle set out in paragraph 5.7, that Pay.UK must promote effective competition within the NPA ecosystem.

As we illustrated in the [EMA response](#) to the [PSR's Call for Input in January 2020](#), historical technical design decisions made with regards to the UK payment systems have led to downstream competition issues, and in some cases prevented payment providers entering and participating in the ecosystem. We therefore support the PSR's proposal in paragraph 5.8 to introduce technical design principles for the NPA, and welcome that they go beyond the original Payment Strategy Forum's Blueprint to reflect the current payments market, and in particular the inclusion of the principle to ensure scalability and modularity of the services provided to ensure future cost effectiveness. Pay.UK's full consideration of these principles in the functional and technical specifications for the CIS will mitigate against the risk that the technical design introduces competitive barriers from the outset.

8. Do you agree with our assessment of the competition risks and their practical implications within the NPA ecosystem? Please explain your response.

We agree with the PSR's assessment of competition risks and the implications this may have for the NPA ecosystem.

However, we note that the PSR will not be able to fully pre-empt every possible competition scenario that may emerge, and that the process to procure a CIS provider should continue at pace. The PSR's oversight of the NPA's design and governance structures should be the critical control which can mitigate against an anti-competitive ecosystem developing.

9. Do you think we have identified the appropriate specific mitigations and governance principles to address competition risks? If not, how do you think they could be improved?

Specific Mitigations

The EMA supports the proposed specific mitigations, but we consider that the PSR's oversight of Pay.UK's adoption of the measures will be the key factor which can mitigate the competitive risks from materialising.

Governance Principles

1. Pay.UK as primary CIS interface

We agree that making Pay.UK the primary interface between the ecosystem and the CIS provider may mitigate the risk that the CIS provider could exploit its monopoly position, and ensure consistent treatment of all participants. However, as the PSR discusses in the consultation, this places Pay.UK in a pivotal role, one which must be conducted effectively.

As discussed in the [EMA response to Questions 1-6](#) of this consultation, we consider some changes to Pay.UK's industry engagement model and governance structure for the NPA programme are required to support their successful management of competitive risks in the NPA.

Stakeholder engagement model

Whilst we recognise that Pay.UK have taken steps to engage the market in their overall operational and governance structure, the NPA programme itself has not been open to broad participation from the whole market as the design for the NPA has evolved. For instance, the membership of the NPA Strategic Participant Group (SPG) was nominated by UK Finance¹, and the structure and operation of the programme working groups are completely opaque to the wider industry. The EMA is unable to identify how small and mid-tier market participants can meaningfully engage with the programme.

We believe that unless Pay.UK take the opportunity to refresh the NPA programme industry engagement model while the design phase is underway, there is a clear risk that the eventual operating model of the NPA, and Pay.UK's decision making process, will suffer from the same lack of transparency and industry representation, and introduce competition risks by design into the NPA.

We do not suggest that the degree of industry engagement should, in any way, slow the pace of the programme further. But engagement should, as a minimum, enable PSPs to understand the NPA design and implementation plans that could directly impact their customers.

¹ <https://www.wearepay.uk/programmes/new-payments-architecture-programme/engaging-with-the-programme/>

2. Rules that promote competition

We fundamentally support the principle that Pay.UK must actively promote competition and ensure access to the NPA is proportionate, objective, and non-discriminatory (POND).

3. Separated CIS provider

In principle, we support the operational separation of the CIS functions if the CIS provider has other business interests in competing payment systems or the competitive layers of the NPA. We also agree with the PSR that legal separation measures should only ever be implemented in proportion to the scale of the problem; for instance, if structural separation is required before the CIS provider is selected, it may narrow the pool of possible or interested providers, unduly affect the procurement process, and drive up overall industry costs of implementing the NPA. Thus, a measure originally designed to support competition, in fact may stifle the market for CIS providers and deter the overall efficiencies that the NPA may deliver.

For similar reasons, we suggest that the PSR develop specific criteria for when operational separation may be necessary. This will inform potential CIS providers of the environment they will be expected to operate during the procurement phase, and may mitigate against the risk of affecting the operation of NPA services, as far as possible, in the future.

10. Do you think that the provision of some common services could raise competition risks that differ substantially from those raised by provision of the CSS? If possible, please share examples.

Our view is that some common services (provided by the CIS provider) could raise competition risks which may stifle emerging market overlay services, but overall, these risks may not differ substantially from those already identified by the PSR.

Pay.UK's decision-making and industry consultation process for assessing whether a service should be provided centrally, will be key to mitigating competition risks arising from common services. For instance, transaction reference data will be provided by the core CSS platform²; clearly there is scope for the CIS provider to enhance that data and provide this via common services directly to PSPs using NPA propositions. This may compete with market overlay providers, such as payment gateways, seeking to provide payment and data services to their

² As indicated in paragraph 2.15 of the PSR consultation document.

customers. Hence the boundaries between common services provided by the CIS provider and services which could be provided competitively by the market will need to be clearly defined and agreed.

11. Which elements of operational separation do you think should be introduced where a CIS provider also provides services to another payment system or the competitive NPA overlay markets? Please explain your response.

We agree with the PSR's initial minimum set of elements of operation separation in the consultation. We note the particular importance of information firewalls if the CIS provider may have access to commercially sensitive information from NPA participants.

As the ownership, products and services offered by the CIS provider's wider corporate group may differ over the period of the contract for providing CIS for the NPA, Pay.UK and the PSR will require sufficient oversight of the CIS provider's wider corporate operations, and tools to introduce further operational separation measures, should it become necessary.

12. Do you agree with our proposal to bring forward regulatory measures to ensure the specific mitigations and governance principles are implemented? If not, what alternatives to the introduction of regulatory measures do you see?

Given Pay.UK's central role in ensuring effective competition in the NPA, we agree that regulatory measures are appropriate to implement the proposed mitigations and governance principles. However, we suggest that any regulatory measures should not be too prescriptive before the risks manifest, so as not to introduce further delays or complexity to the NPA programme. Rather the measures should reinforce the PSR's ability to oversee and enforce the risk mitigations and governance principles, if required.

Questions related to pricing

13. Do you have any comments on the pricing principles set out in this document?

We welcome the PSR's objective of establishing a level playing field for CIS user pricing and support the pricing principles that the PSR has set out. However, we note that some of the principles may conflict with each other in the early stages of the NPA rollout; please see discussion below.

- Reflect efficiently incurred costs

We agree that once the NPA is fully implemented and running, Pay.UK should be able to establish CIS user prices that reflect the incurred operational cost of the CIS service. However, applying a 'cost recovery' model throughout the 'build' phase of the NPA programme will naturally lead to high fees for initial CIS users as the infrastructure investment costs will need to be recouped. In turn, this could act as a disincentive from joining the NPA until the pricing reduces in value.

This indicates that the ability to achieve this principle may be wholly dependent on whether Pay.UK seeks additional funding for the building of the CIS infrastructure, such as the options suggested by the Payment Strategy Forum in its analysis of the commercial approach³ for the NPA (funding by investment, or debt).

- Incentivise utilisation of the NPA

As the PSR mentions, the user pricing will be a key incentive to encourage migration to the NPA, and in supporting new payment market participants to develop services at all levels of the NPA. Pay.UK will have to consider the commercial approach for building the CIS infrastructure, and consequently this may also warrant that they have to consider alternative user pricing structures and levels.

- Foster competition in services to end users

The EMA supports the principle of fair and equitable pricing for all end-users, but also acknowledges that the NPA has to provide a compelling commercial proposition for all participants. Perhaps as an extension to this principle Pay.uk should consider that CIS pricing should not in itself create barriers to providing competing services based on the NPA.

- Be transparent and predictable

We fully support transparent and predictable CIS-user pricing, and the PSR's suggestions for how Pay.UK can achieve this (in paragraph 6.29 of the consultation), including publishing the methodology for calculating all pricing.

To enhance the predictability of user pricing, Pay.UK should also consider a regular user pricing review cycle which would be conducted in consultation with industry in a fully open and transparent manner.

- Adapt to changing competitive conditions

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<https://implementation.paymentsforum.uk/sites/default/files/documents/Commercial%20Approach%20and%20Economic%20Models%20Blueprint.pdf>

As discussed above, we concur that CIS user pricing should be adaptable to changing market conditions, and ensure that the NPA is a commercially attractive proposition for all participants.

14. Do you think the pricing principles sufficiently address competition risks relating to CIS user pricing set out in Chapter 6? If not, what additional principles should we be considering?

As discussed above, we support the proposed CIS-user pricing principles and consider that they will address competition risks.

List of EMA members as of May 2021:

[AAVE LIMITED](#)
[Account Technologies](#)
[Airbnb Inc](#)
[Airwallex \(UK\) Limited](#)
[Allegro Group](#)
[American Express](#)
[Azimo Limited](#)
[Bitpanda Payments GmbH](#)
[Bitstamp](#)
[BlaBla Connect UK Ltd](#)
[Blackhawk Network Ltd](#)
[Boku Inc](#)
[CashFlows](#)
[Circle](#)
[Citadel Commerce UK Ltd](#)
[Contis](#)
[Corner Banca SA](#)
[Crosscard S.A.](#)
[Crypto.com](#)
[Curve](#)
[eBay Sarl](#)
[ECOMMPAY Limited](#)
[Em@ney Plc](#)
[emerchantpay Group Ltd](#)
[ePayments Systems Limited](#)
[Euronet Worldwide Inc](#)
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[First Rate Exchange Services](#)
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[Flex-e-card](#)
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[Gemini](#)
[Globepay Limited](#)
[GoCardless Ltd](#)
[Google Payment Ltd](#)
[HUBUC](#)
[IDT Financial Services Limited](#)
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[MONAVATE](#)
[Moneyhub Financial Technology Ltd](#)
[MuchBetter](#)
[myPOS Europe Limited](#)
[OFX](#)
[OKTO](#)
[One Money Mail Ltd](#)
[OpenPayd](#)
[Optal](#)
[Own.Solutions](#)
[Oxygen](#)
[Park Card Services Limited](#)
[Paydoo Payments UAB](#)
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[SafeCharge UK Limited](#)
[Securiclick Limited](#)
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[Soldo Financial Services Ireland DAC](#)
[Square](#)
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[SumUp Limited](#)
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[Token.io](#)
[Transact Payments Limited](#)
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