



Response to the CMA's Draft Order for consultation

23rd December 2016

Response to the CMA's Draft Order for consultation, by the Financial Data and Technology Association (FDATA)

1. [About FDATA](#)

The Financial Data and Technology Association is a trade association.

Our members provide innovative financial applications and services to empower customers to make better decisions and take fuller control of their financial lives across all their accounts, credit cards, loans and investments.

We seek to work with government, regulatory authorities and financial industry stakeholders in our mission to open up Britain's financial sector to the benefits of financial data and technology

2. [Introduction](#)

FDATA's interpretation of the purpose of this order is that it should reflect the letter and spirit of the CMA's final Retail Banking Investigation report. In that sense, we are broadly satisfied that this Order achieves its purpose.

We would also wish to highlight that the early teething problems in the Implementation Entity (IE) appear to have been resolved. The programme is underway at pace and our interaction with the IE has given us confidence that there are sufficient numbers of high-quality individuals in place to facilitate a successful delivery.

However, we wish to take the opportunity to make a series of general points which we believe are critical to the successful delivery of 'open banking'.

These points - which are in essence our key concerns and identifiable risks for successful delivery - are grouped as follows:

- The 'Live Market' for fintech
- The market for cyber-insurance
- External awareness

3. The 'Live Market' for fintech

It is too often forgotten that the work of HMT, the OBWG, the CMA, the FCA, FDATA and others during 2015 and 2016 has not been for the purpose of creating a fintech element to our financial sector. This 'Live Market' already exists, and the purpose of the work is to make it better for all three of its participants; financial institutions, fintechs and, most importantly, consumers. The primary method by which we are attempting to make the sector better for its three participants is to create an API which it is broadly hoped will usurp screen-scraping as the method of choice for pulling transactional data sets.

The propensity to forget the current existence of the sector has, we believe, led to an unwillingness to treat with sufficient seriousness the co-existence of the old and new regimes after January 2018.

The scope of the CMA's recommendation is limited to the creation of an open API for current account data sets only, leaving all other financial products including savings accounts, credit cards, mortgages, loans, investments, pensions, and so on, under the 'old' regime of screen-scraping. It is vital that the CMA, FCA, HMT and the IE all understand that the fintech sector will not cease any of its screen-scraping activity until and unless that financial product is mandated to be placed within an open API structure.

This backdrop creates a recipe for large-scale customer confusion. A consumer's third party provider (TPP) is highly likely to be simultaneously (on the same dashboard or app):

- Providing API-obtained current account transactional data, for which it is whitelisted by the future open banking governance regiment and regulated by the FCA under PSD2
- Providing payment account transactional data (e.g. credit cards) obtained by screen-scraping which is regulated by the FCA under PSD2 but which breaches the terms and conditions of many large financial institutions
- Providing other transactional data (e.g. mortgages) obtained by screen-scraping but outwith PSD2's remit and therefore not regulated by PSD2 and not authorised by the lender

This issue is live and will not go away - it cannot be ignored and must be addressed.

RECOMMENDATION 1: The CMA should explicitly mandate the Implementation Entity to work with the FCA in order to create a transitional solution which legitimises the 'Live Market', probably by ordering financial institutions to alter their Terms and Conditions to allow screen-scraping by those TPPs whose security arrangements are deemed good enough to merit whitelisting for the purposes of accessing the API. Ideally, this transitional period would be defined as being the length of time before that particular data set becomes available through an open API.

RECOMMENDATION 2: The CMA, or if more appropriate HM Treasury, should make clear that the destination of open banking is not a regime where only current account data is available through an open API, but where *all* types of transactional data sets are available through an open API. Ideally, an indicative date should be set by which time this should be in effect.

4. The market for cyber-insurance

Self-evidently, TPPs wishing to access the open API when it goes on-line in January 2018 will need to be insured. However, there is currently no definable market-place capable of providing such insurance.

It is highly unlikely that such a market-place will emerge until there is more clarity over the whitelisting/governance regime, who will be policing it, what the sanctions will be and so on.

Furthermore, it is highly unlikely that the insurance market will be able to price its product until it is clear that the API is open and standard - it needs a stable base-line.

FDATA's Chairman Gavin Littlejohn has commenced the writing of a paper on this issue but we must be aware of its critical importance and the potential that the regime cannot start in January 2018 unless the conditions for the creation of an insurance product are there well in advance.

RECOMMENDATION 3: The CMA should keep a watching brief on this particular issue and be cognisant of its critical importance in successful delivery.

5. External awareness

Despite the huge volume of work which has taken place over the last 18 months, by the OBWG, then the CMA and, now, the IE, FDATA believes that there remains very low external awareness of the change which open banking will bring to the market and to the everyday financial life of a consumer.

This lack of external awareness exists at political level, media level and public level and, unless a strategy is put in place to address it during the course of 2017, there is a risk of a low-energy 'launch' with poor understanding and poor take-up.

The potential for poor consumer misunderstanding and hostility is particularly concerning because, given the nature of the data which we are using, it is easy to envisage a situation where incorrect information about the use of data could spread through the public discourse 'before the truth has got its boots on'.

RECOMMENDATION 4: The CMA should request that HM Government clarify its intentions, if any, to advertise the existence of open banking, or to create a body to do so, in the same way as it has previously advertised large-scale industry changes (a current example would be smart meters in the energy market). The CMA should then consult the IE and take soundings on how it might create a public awareness programme throughout the course of 2017.

6. Summary of recommendations

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