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The Financial Conduct Authority

Re: FCA Open Finance Call for Input – GDF Response

About GDF

GDF a leading industry body that promotes the adoption of best practices for crypto and digital assets and digital finance technologies through the development of conduct standards, in a shared engagement forum with market participants, policymakers and regulators. Established in 2018, GDF has convened a broad range of industry participants, with 300+ global community members - including some of the most influential digital asset and token companies, academics and professional services firms supporting the industry.

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?

GDF notes that in order to maximise the potential of open banking there needs to be flexibility in the supervision of new products and services as well as the broad interpretation of regulated activity. It will also be important to identify and enable innovative use cases. During the early stage of Open Banking and in many ways, until today, the range of products delivered through open banking has not hit its potential. This can come down to many reasons including: the lack of consumer confidence in shifting away from incumbents; barriers to entry; and the procedure for redress. In our view, however, a key reason is that legislators failed to identify and enable core use cases in order to build an ecosystem around them. This has meant that in practice a number of innovative and potentially valuable use cases are not adequately supported. GDF also notes that at present there is a significant focus on the retail market and recommends that the FCA look at how more can be done to target the SME market.

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

GDF notes that the successes of open banking lie largely around the statutory mandated approach. One of the biggest barriers to adoption will be getting institutions to open up their services and make available consumer data. In countries where a mandated approach has not been taken, it has been found that convincing institutions to share information has been difficult, certain jurisdictions have opted to allow financial incentives – i.e. paying for access to the information. This can itself be a barrier to entry of course. Depending on how Open Finance is delivered, it will be imperative to incentivise the sharing of data.

Open Banking benefits from having a central authority developing and delivers the Application Programming Interfaces (APIs), data structures and security architectures that will enable developers to harness technology. This entity has proved vital in the success of open banking in the UK. It also raises the important point of standardisation. A central implementation entity ensures that there is only one set of standards that need to be followed, which is essential for adoption at scale.

However, to have a central authority raises the question of funding. With Open Banking, the implementation entity benefited from the funding of the 9 largest banks, this is something that will need to be considered with open finance.

As detailed by the FCA, Open Banking has delivered a number of new developments that were not envisaged. This will certainly be the case with open finance as well and as such there needs to be flexibility for this development.

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

GDF would suggest that the FCA reconsiders the wording used in the definition of open finance. Whilst the FCA determines that the data belongs to the consumer, there could be some issues considering how this definition interlinks with the use of controllers and processors under the GDPR. GDF recommends that the definition would need additional depth to cover long term use of open finance considering other data protection principles such as accuracy and purpose limitation.

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

GDF agrees with the assessment of potential benefits, however notes the number of developments that were not envisaged in the creation of open banking. Flexibility needs to be given to ensure that this remains the case with open finance and that the system can be adapted to accommodate innovative and useful developments in future.

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

GDF determines that it is imperative to look for potential use cases and the data needs around this. A way of conducting this will be through identifying desirable customer behaviours and barriers to this. For example, shifting consumers away from holding debt on credit cards towards loans carrying a lower interest rate may be a desirable outcome. Identifying barriers to these goals and then finding ways to remove or mitigate them would help maximise uptake and benefits.

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

From the position of GDF, the most logical sequence would be to start with non-payment accounts (eg long-term savings). There are obvious synergies in this space and sometimes arbitrary delineation, driven in part by the FCA's approach. This will be a natural progression from open banking and will arguably have a large impact to a wide range of consumers. Insurance products would then be the next step after this, whilst it may be quite difficult, there is a mass penetration benefit here with plenty of data on hand to be shared for new products to be created.

Pensions will be the most complicated aspect of this. There will be the pensions dashboard which will assist the development, however as a whole the above would be seen as most likely to derive the greatest benefit and certainly quicker.

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

There are a number of issues that can come out of open finance including the systemic issues that can arise from over-automation of decisions, including the risk of unintended systemic bias or of defective logic being hard-wired into the decisioning process. The implementation unit should assess the risks surrounding this, although of course the FCA can also draw on previous explorations of these sorts of issues.

There will inevitably be the creation of a number of marginal firms who will be operating in this market; the question that will need to be addressed is whether new regulated activities need to be added, either to regulate these players or to ensure that they are able to access the data they need. For example, with open banking a number of business models emerged involving indirect access or 'white-labelled' solutions, and where it became clear that the party accessing data did not fall within the regulatory definition of an AISP and did not therefore have a statutory right of access to account data.

There will be obvious cyber security risks and there could be a new wave of fraud coming through. In addition to guarding against these, there will need to be a discussion as to where liability will lie. At present PSD2 determines this, in respect of payment accounts, however open finance will move outside of the parameters of this and as such discussions need to be had with the community to determine how liability will be apportioned.

Open finance will change the market and the way that products are sold and advertised. This could lead to reducing consumer understanding of the financial products that they are being offered. Equally there will be a lower level of awareness of the product features and the risks around this.

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

GDF considers whether the activities outlined in A-D adequately capture the likely business models. Addressing each model in turn:

Activity A is not a regulated activity if it is not a payment account. Therefore, on what basis will a provider be entitled to access other accounts and how will it be regulated? This appears to be a gap that needs to be addressed.

Activity B is fine where it is regulated however, if for example a firm was advising on an overdraft, this will not be a regulated activity if there is not an introduction. In addition, there are questions raised as to whether PRIN 9 will apply to all firms that carry out this activity for examples AISPs. If firms carrying out this activity are not regulated at all, for example if they only advise on current account then PRIN would not apply.

Activity C will need to consider what happens when the activity is not from a payment account and therefore will not be a payment service.

Activity D may be a regulated activity however GDF questions how realistic this activity will be for this product type and therefore whether automation will be desirable.

GDF notes that the FCA should consider that not all TPP initiated payments are necessarily protected, for example variable payments initiated under a mandate given to a PISP. In addition, the statutory protection only covers payments from payment accounts.

Aside from the activities covered under A-D, GDF considers that the UK regulatory framework would need to be amended to sufficiently cover open finance. At the core, there should be a strong governance structure which ensures that open finance is run within clear principles. For open finance to encourage new products and TPPs the framework would also need to be streamlined to provide clarity for the providers and the consumers.

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

For established firms, the greatest issue that they face is having the technology to be able to share customer data effectively and safely. When this is achieved, it will come back to the cost/benefit angle – are there sufficient benefits for the established firm to invest in the technology and risk the potential dangers around data sharing for the benefits that come from open finance. Therefore, there may need to be some sort of incentive to ensure that these services are opened up.

For TPPs the greatest concern will be the availability and performance of APIs. This has been the biggest issue by far in Open Banking and has certainly been noted as the biggest obstacle across Europe with regards to PSD2. Customer willingness to move to TPPs will also be a barrier. Will consumers be willing to take on financial products outside of the incumbents? There needs to be the same sort of reassurance that TPPs are able to offer the same sort of protection as the incumbents for them to be able to achieve the levels of penetration that is needed to feel the full benefits of open finance. Finally, as mentioned earlier, standardisation will be imperative for TPPs to be able to offer services across the board.

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

GDF notes that there is likely to be very little incentive for parties to take part in open finance given the scale of development and integration work that will be needed for this to work. As such, it is likely that there will need to be a regulatory framework in place that would mandate open finance and ensure that the desired outcomes are met and that open finance evolves in the intended way. GDF also notes the importance of highlighting the intended outcomes from open finance to incentivise incumbents and TPPs to see where there is an opportunity for them in the longer term strategy.

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

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

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

GDF notes that partial participation of open finance suggests that this would be a voluntary regime. As such, there is the strong likelihood that open finance will not meet its desired outcomes. Partial participation will lead to a fragmented market between those operating in open finance and those that are not. Open Banking looked to move away from screen-scraping and adopt APIs as the best form of data sharing, whereas a partial and voluntary adoption of open finance will conversely be likely to lead to an increase in screen scraping. It will also result in a lack of standardisation which will be a huge barrier to entry. As a result, many of the TPPs and solutions that are intended to be encouraged by open finance will be restricted. Finally, there will be an unreliable level of data as data sets will be incomplete, reducing the efficacy of comparison tools for example.

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

GDF considers the creation of a central authority for the delivery of open finance to be the most significant function for the success of open finance. The body would be able to ensure the consistent application of standards and also ensure the interoperability across industries, which is integral to the project. As mentioned previously this is a key factor to the success of open banking.

As for other functions, GDF considers that product comparison will be an important function of open finance as will account aggregation and rules-based management.
From a standards perspective, open finance will need to harmonise the standards for product and account data to ensure that first of all that it is the same data that is being collected across all industries but also that data sets are complete. There will also be a need to ensure that authorisation is given to all entities within the open finance network and that this process is standardised across the board. The consumer experience should also be at the heart of the standards. Open Finance should be developed with the consumer at the centre of the thought process and therefore standards pertaining to this should be followed. For example, complaints handling will need be standardised so that consumers have the confidence that the rights of redress for using products native to open finance are the same as usual. It will also be important to ensure that consent is managed effectively to make sure that customers are only sharing what they intend to and that the sharing of data is not abused.

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

Q16: To what extent should the standards and infrastructure developed by the OBIE be leveraged to support open finance?
Whilst it may be effective to learn from the OBIE, and there may be tempting synergies to be had, there is a risk of creating a monopoly in just leveraging this to support open finance. GDF also believe that in doing so there could be a risk of losing out on better and more novel solutions.

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

Yes, work will need to be done to ensure that there is a strong framework in place supported by the GDPR, but the GDPR on its own will not be sufficient. For example, the GDPR focusses on how companies hold the data and the rights of the consumer around this but does not provide clear enough rules on consent. For example, the extent to which data can be shared and how this impacts the consumer. A separate framework should determine this. It also does not provide rights for third parties to access data, or regulation of those third parties, which should be a core component of any open finance solution.

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

GDF agrees that open banking is a good starting point for developing open finance, however it is certainly not the finished solution and urges the FCA to be cognisant of this. There needs to be clear and careful consideration as to where liability is apportioned and the rights of redress. Bringing together a wide range of sectors, it will also be important to ascertain who will be authorising and supervising the TPPs, if there are then a range of supervisors, thought will need to go into how the multiple supervisors will interact between each other. Finally, thee needs to be additional consideration as to the relationship between the financial institutions and the TPPs. Will this be a statutory or a contractual partnership?

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

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

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

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.

GDF agrees that a regulatory perimeter may inhibit the development of open finance because it will constrain innovation. Firms outside of open finance will not be able to access the data and therefore there will be solutions that are not able to break into the market.