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Commerce Commission New Zealand
Te Komihana Tauhokohoko
Retail payment system

Request for views on payments made over the interbank payment network

Payments NZ Limited submission

25 September 2023

Introduction

1. This submission is made by Payments NZ Limited (Payments NZ) in response to the request from the Commerce Commission New Zealand, Te Komihana Tauhokohoko for views on payments made over the interbank payment network. We have responded to the questions set out in the consultation on the Retail Payment System: Payments Between Bank Accounts.
2. We acknowledge the purpose of the Retail Payment System Act 2022 (the Act) to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand. The Commerce Commission has proposed that it use its powers under the Act to complement the work which Payments NZ has done to "create an environment that enables payment providers to launch innovative options to make bank transfers."
3. Payments NZ is a governance body at the heart of Aotearoa New Zealand's payment system. Our objectives are to promote "interoperable, innovative, safe, open and efficient payments systems" and we work alongside industry to lead the future direction of payments in Aotearoa. We work to deliver world class payments systems and networks which ensure that payments happen as they should. As part of this, we have established the API Centre to bring open banking to Aotearoa.
4. In addition, Payments NZ has initiated the next generation payments programme to assess the delivery of new real-time payments infrastructure. The introduction of next generation infrastructure alongside existing payment systems introduces a significant, alternative, payments capability providing modern functionality that cannot be effectively replicated in existing systems, including real-time account to account payments which can be utilised in retail payments scenarios. The design objectives of the next generation payments initiative include broader access (increasing competition and innovation), efficient and cost-effective exchange of payment and associated information in real-time, and improved protection against fraud and scams.
5. While we support the Commerce Commission's desire to see "new payment options that allow consumers to make payments between bank accounts", we do not support the current proposals to designate the 'retail payment network' and have reservations in relation to the outcomes which could be delivered through greater regulation. Our views are set out in detail in our responses to the questions below.

Q1	**Do you agree that EFTPOS card use is likely to continue to decline? If not, why not?**
	Up until the 2020 COVID pandemic, the share of payments between magstripe cards, contact debit and contactless debit had been relatively static. The health response to the COVID pandemic during 2020 saw a significant increase in the use of contactless payments – initially at the expense of contact debit (because these card were already contactless enabled) and then in September 2021 the volume of contactless debit transactions surpassed magstripe cards for the first time. This historical view of the mix of retail card payments shows the COVID health response undoubtedly kickstarted the growth in contactless payments. And while the popularity of contactless debit continued through 2021 and 2022, the mix between payment types has now plateaued. Contactless debit reached a peak share of all debit

payments of 44% in April 2022. Since then, over the last 16 months, contactless debit has consistently held a share of around 40%, while magstripe and contact scheme debit has maintained a 60% share of payments.

So as stated in section 2.18 of the consultation document, there has been a growing customer preference for contactless technology and the greater utility of chip cards such as the ability to make purchases online and to chargeback disputed transactions.

However, the trend over the last 16 months shows the rise of contactless transactions and decline of EFTPOS has plateaued and may have now reached an equilibrium.

Q2	**Do you agree with our assessment of the factors contributing to the decline in Eftpos card use? If not, why not?**

As noted above, the greater utility and consumer protection provided as part of the scheme debit proposition along with the health response during the COVID pandemic lead to the initial decline in the use of EFTPOS cards.

Fraud risk is another factor which has contributed to the decline of EFTPOS cards (magnetic stripe only) being issued. The traditional EFTPOS card is a magnetic stripe product, without the protection of chip, and as such remains at risk of skimming attacks. International fraud trends have shown that as chip and pin are introduced into markets, skimming fraud migrates to markets without chip and pin. This leaves the EFTPOS magnetic stripe card at risk of a coordinated attack and this vulnerability has led to consumers and issuers preferring the added security provided by chip cards. The drive to protect customers from fraud risk has led to a decline in magnetic stripe cards being issued. As chip and contactless capability now invariably come combined as one, the corresponding increase in chip cards has led to a rise in contactless transactions.

Although as highlighted in Q1, the trend over the last 16 months shows the rise of contactless transactions and decline of EFTPOS has plateaued and may have now reached an equilibrium

Q3	**What do you see as the barriers to innovation and success for Eftpos?**

EFTPOS operates within a global network where the interoperability across card issuers, acquirers, switches, terminals, and ATMs is core to delivering the ubiquity required for a retail payment system. While there are no barriers to innovation, the need to meet and comply with global standards means innovation in EFTPOS would be likely to follow a similar path to scheme products (i.e. chip, contactless, online or mobile capability). The challenge for EFTPOS will be innovating while at the same time making the product more secure (noting that the traditional EFTPOS card is a magnetic stripe card, without the protection of chip). Innovation in EFTPOS is therefore likely to begin with a move to chip, contactless or mobile capability. Issuers, acquirers and merchants, via their terminals, have already invested in this and innovation for EFTPOS will need to deliver a secure product without duplicating security and fraud protections costs already incurred.

Q4	**Do you agree with our view that the decline in Eftpos card use is reducing the competitive pressure on the debit card networks for in-person payments and**

	that this may have a detrimental impact on consumers and merchants over time? If not, why not?
	EFTPOS (including magnetic stripe and contact scheme debit) still accounts for approximately 60% of the debit card market and this volume, combined with its lower cost model for merchants, means it continues to provide meaningful pricing competition. As highlighted in section 2.18, consumer preferences, including the COVID pandemic response has driven the increased use of scheme products and this has, in turn, been driven by the level of innovation and increased functionality introduced by the schemes over the last 20 years. There is nothing to suggest consumers and merchants will not continue to benefit from ongoing innovation into the future.
Q5	**Do you agree with our view that competitive pressure in the payments between bank accounts landscape could be increased by enabling an environment where payment providers develop innovative options to make bank transfers? If not, why not?**
	Payments NZ's objectives are to promote interoperable, innovative, safe, open and efficient payment systems. To succeed, any innovation needs to encompass all of these elements (i.e. innovation can only occur alongside consumer and merchant trust in a safe and efficient system). Innovation on its own, without this holistic approach, is unlikely to gain the scale required in the retail payment environment. Payments NZ, through its API Centre, is developing standards in the bank account landscape which will allow payment providers to develop innovative options which give consumers greater choice and flexibility for both retail and non-retail payments. Similarly the next generation payments initiative is specifically designed to enable innovation and competition in a modern, data-rich, real-time ecosystem.
Q6	**Do you agree that we have captured the existing benefits and problems with the traditional method of initiating bank transfers? If not, what other benefits or problems exist?**
	Section 3.2 describes the benefits and challenges with bank transfers as they operate today. However, if bank transfers were used in conjunction with overlay services which then scaled and became mainstream, the attributes would change. For example, while a bank transfer in the current environment might not incur a fee, a bank transfer initiated through a new secure overlay service might not be free. Table 3.1 states that bank transfers settle faster than other payment instruments, with bank transfers settled within a few hours and EFTPOS transactions settled the next day. While that is true from a pure settlement perspective, a key feature of card payments is the point of debt creation and discharge. Acceptance of an authorised card payment instruction immediately creates and discharges the debt between the cardholder and the merchant. Therefore, while the funds are not deposited into the merchant's account until the next day, the funds are guaranteed once the issuer has provided the authorisation and the cardholder is entitled to use the merchant's services or walk away with the merchant's goods. The acquirer, with whom the merchant has a merchant agreement, takes on the risk of collecting the amount of the payment instruction from the cardholder's bank (the issuer). Innovative payment providers would need to adopt a similar model – i.e. one that can provide for similar guarantee of payment.

It is noted that the design objectives of the next generation payments initiative seek to address constraints in the existing environment described above.

It is also important to note that bank transfers do not operate within the same scheme framework that encompasses the customer experience, fraud protection, dispute resolution and global network that has driven the growth of card payments. An overlay service that establishes a 'pay by bank'[1] network, using the account to account retail payment system, will need to consider these broader needs and customer expectations in order to gain trust and popularity.

Q7 **Do you agree with how we have described and ranked the different methods for payment providers to access the interbank payment network to initiate payments? If not, why?**

We agree with the description of the different methods for payment providers to access the 'interbank payment network' but note that there are also proprietary APIs. Unlike bespoke APIs that are designed for a particular third party and are therefore not scalable or publicly available, proprietary APIs offer a publicly available premium value proposition that can be used by multiple third parties.

We also note that reverse engineering a bank's mobile app APIs is distinct from reverse engineering the app itself. The Open Worldwide Application Security Project ranks "insufficient binary protections" (through reverse engineering) as the seventh highest security risk for mobile apps.[2] This is because:

- reverse engineering the app can provide access to secret keys, algorithms and vulnerabilities; and
- in the case of code tampering, the attacker can remove licence checks, circumvent paywalls or add malicious code.

When reverse engineering a mobile app, it is possible to override or manipulate authentication mechanisms (e.g. two factor authentication). When this is combined with mobile app mimicking, an attacker is able to re-create customer experiences which lead the customer to believe they are dealing with the legitimate mobile app.

Mobile and web security risks are continually evolving and the current ranking of sub-optimal risks in figure 3.1 does not reflect the latest knowledge.

Optimal access methods have better fraud detection due to the emphasis on identification of all parties within the ecosystem.

We believe that standardised APIs would provide the same level of access as regulated APIs if the API Centre were to develop an accreditation framework and partnering standards (default terms for the use of API services).

Q8 **Are there other key features of the payment initiation network access methods you would like to draw to our attention?**

In relation to sub-optimal methods, the following issues arise:

[1] Non-card payments that are initiated by customers and merchants either directly or indirectly are referred to as 'pay by bank'. These propositions are delivered by third party payment providers and leverage either the open banking API standards, or one of the sub-optimal methods.
[2] https://owasp.org/www-project-mobile-top-10/

- "unrestrained powers" – once access is granted to the payment provider through the use of a customer's credentials, the payment provider has unrestrained access to the customer's accounts;
- "reliability" – there are no contractual obligations on the bank in relation to uptime/availability to support the payment provider proposition (i.e. a payment provider's service may unexpectedly go offline).

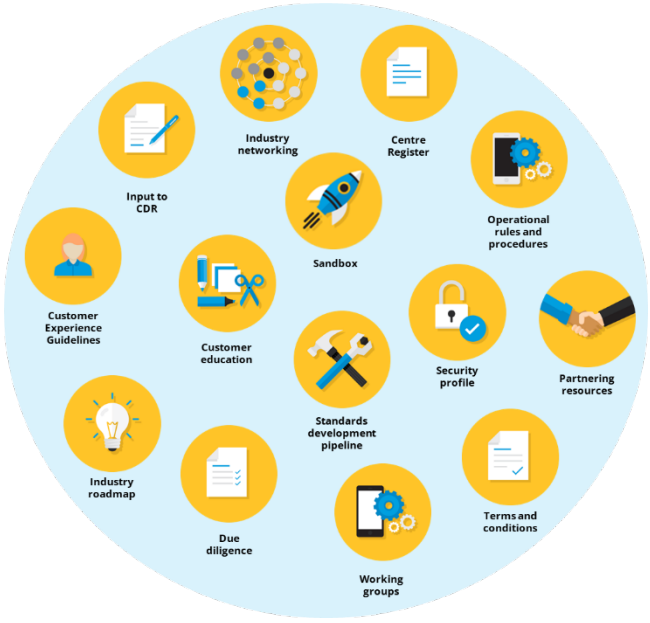
Q9 **Do you agree that these API related requirements are sufficient to enable an environment where payment providers can develop innovative options to make bank transfers? If not, why?**

The three requirements in section 4.2 are sufficient to *begin* developing a 'pay by bank' overlay service for retail payments. With those three components in place, early adopters and innovators can begin to develop new propositions. However, creating a sustainable space for payment providers also requires:

- effective and sustainable governance, with clear roles and responsibilities, which underpins trust in the network and encourages uptake;
- roadmap management, iterative delivery, ongoing security uplift to keep pace with the security risks and trends, and constant assessment of market needs;
- operational reliability standards such as performance, availability and data quality – it is noted that this has been an issue in the United Kingdom, Europe and Australia;
- assurances that there is conformance with technical, customer and operational standards;
- appropriate tools and onboarding (e.g. register updates, an industry sandbox, education and implementation guides).

It is also important to consider customer standards (rules) that define an organisation's obligation for transparent and informed customer disclosures to support a safe and trusted ecosystem.

The diagram sets out the elements required to ensure that payment providers can develop innovative options to make bank transfers.



The API Centre has produced, and continues to manage, technical API standards for data sharing, payment initiation and the API security standard.

To support organisations who invest in the development of innovative propositions, the ecosystem is supported with developer tools, resources, best practice guides and operational requirements. The API Centre can set minimum open banking implementation plans with milestones and minimum requirements for operational readiness. The five largest API Providers have planned milestones but any API Provider can choose to

deliver the milestones earlier and is able to build beyond the minimum required in the plan.

Q10	**Do you agree with our view of the long-term benefits to merchants and consumers from the development of innovative options to make bank transfers? If not, why?**

Payments NZ agrees that any retail payment system needs to be efficient, interoperable and safe for all stakeholders. Section 4.7 suggests bank transfers used in conjunction with APIs and overlay services will deliver increased speed of payment and time saving through improved reconciliation at a reduced cost. While Payments NZ endorses these outcomes, they are not certain. The cost, speed and reconciliation will depend on the design of third party propositions. Payments NZ is currently investigating the development of a next generation payment system, including real time capability, to enable people and organisations to make an account-to-account bank or mobile wallet payment where funds transfer from the sender to the receiver almost immediately, at any time. In addition to real time capability, the underlying system could also deliver a host of other benefits such as rich data, API connectivity, and modern features such as request to pay and payee confirmation.

Open banking regimes enable third party organisations to innovate. Over time, the use cases and propositions that emerge can create long-term benefits that are specific to the problems they are seeking to solve, for example, convenience, certainty, financial literacy, bill payment optimization or reducing operational costs through streamlining accounts payable or receivable. These benefits could be far-reaching, improving productivity in all sectors and for all New Zealanders.

Q11	**Do you consider that the existing industry open API standards are a good starting point to enable innovative options to make bank transfers?**

The API Centre API standards are a good place to start. They are informed by market demand and we believe that industry should continue to develop and publish API standards. We do not support a demarcation between regulated and non-regulated API standards. Any intervention that results in deviation from a single set of API standards, or a demarcation between what is regulated and what is not, will have a detrimental effect on the pace of innovation.

Q12	**Do you consider the future of industry open API standards will enable innovative options to make bank transfers?**

Yes, industry API standards enable innovative options to make bank transfers. However, these will need time to mature, and uptake will evolve over time. The API Centre supports continual growth of the API standards to enable ongoing innovation of pay-by-bank experiences.

There is regulatory interest in open banking, open data, and an open payments ecosystem and it is essential that there is a coordinated approach between regulators. There is a risk that multiple regulators could cause long-term slowdown for all participants in the ecosystem. A coordinated approach between regulators, and agreed prioritisation for the use of regulatory powers, could provide clarity for the API Centre, its standards users and organisations who are considering actively developing innovations and assessing opportunities for the future. This was highlighted in the Australian Government response to the Statutory Review of the CDR, see for example Recommendation 2.3 and Finding 3.5 https://treasury.gov.au/sites/default/files/2023-06/p2023-404730-gs.pdf

The API Centre leads the development of open data, open banking, and an open payments ecosystem in Aotearoa. The API Centre adopts best practice for technical standards development and this requires continuous management over multi-year cycles (e.g. the API Centre is currently consulting on and planning standards that are likely to be two years away from getting to market). As part of this, the API Centre embeds flexibility to respond to market needs.

While current API standards in market may not be feature-rich enough to meet the use cases of all payment providers, we continue to consult on the roadmap so that we develop features the industry requires. The future API standards will include standards for customer experience and operational reliability. We are also looking at how we can better facilitate API standards users entering into bilateral partnerships because APIs, without a framework for third party access, will not create a network or a market.

Q13	**What gaps are there in the open API standards for innovative options to make bank transfers?**

There will always be gaps in an evolving and innovative market.

The API Centre is currently looking at features to be included in future API standards which will appeal to retail payment providers and the API Centre remains focussed on the implementation of standards which are co-designed with industry to meet industry needs.

However, for expansion of pay-by-bank solutions for customers, fraud risks must be mitigated and customers must be protected.

The API Centre actively manages the evolution of API standards (and the operational framework for these) and works to ensure that, as the functionality grows, the payment network operates efficiently and trust is maintained. Each version ensures backwards compatibility so that organisations already using the standards are not adversely impacted by new versions.

Q14	**Do you agree that the key barrier preventing payment providers from gaining efficient access to the interbank payment network is that the banks have not universally built open APIs? If not, why?**

When banks offer standardised APIs, access for third parties is more efficient. To assist with this, the API Centre has set a minimum open banking industry implementation plan which requires the five largest API providers to have APIs built by specified dates. This provides certainty to third parties. However, parties still need to form bilateral partnerships and this can be challenging. The API Centre is looking at how it can better facilitate API standards users entering into partnerships more easily.

Also, as noted under question 9, there are a range of other requirements which also need to be met to deliver an API-enabled pay-by-bank network accessible by payment providers. As set out in Payments NZ's payments modernisation plan, the next generation payments initiative seeks to address these gaps through real-time enabled infrastructure.

Q15	**Do you agree that the main reason the banks have not universally built open APIs is due to the uncertainty of commercial incentives for them to do so? If not, why?**

Each bank will have its own reasons for the approach which it is taking in relation to APIs and the investment decision for each individual bank will require prioritisation of open banking relative to other business priorities. We note that uncertainty about the regulatory landscape may be impacting prioritisation decisions.

Q16 **Do you consider that the industry implementation plan creates sufficient certainty that the banks will build the open APIs? And do you consider that the minimum delivery dates are appropriate? If not, why?**

The industry implementation plans are binding on the API Providers and therefore create certainty and give confidence to third parties that all API providers are building the same version of the standard. If an API Provider were unable to comply with the plan, it would be required to apply for an exemption from the obligation. The API Centre terms and conditions set out the process for determining whether an exemption should be granted.

An implementation plan can only be approved if it will:

- promote system efficiency, security and innovation through the use of the API standards by API standards users in accordance with the API Centre terms and conditions;
- facilitate API standards users entering into partnerships to bring innovation to market more effectively and efficiently; and
- be reasonable for API providers.

The minimum delivery dates in the first industry implementation plan are reasonable and take into account the effort to build the APIs, security standards, internal partnering capabilities, developer portal and service capability, UI/UX in the mobile app, and operational processes to support both customer service and developer relations.

Q17 **Aside from the network access issues, are there other issues with the interbank payment network that reduce competition or efficiency? For example, the speed of payments or amount of information attached to payments?**

As noted earlier, account to account payments do not currently accommodate richer data. The next generation system payments initiative is looking at immediate confirmation for the merchant and benefits such as rich data, API connectivity, request to pay and payee confirmation. In the meantime, the API Centre has the governance in place to set industry roadmaps that seek to deliver and then maintain a supported, competitive ecosystem allowing third parties to offer a broad range of 'pay by bank' propositions for customers.

It is also noted that. unlike the United Kingdom, Aotearoa does not have a licensing regime for payment service providers which could streamline accreditation for open banking third parties.

Q18 **What do you consider are the main barriers to negotiating agreements between banks and payment providers for access to the interbank payment network (assuming open APIs are built)?**

Payments NZ undertook research in 2020 to understand the challenges facing third parties. The thematic challenges, which largely remain in place, can be summarised as:

- high effort required for third parties and API providers (banks) to partner bilaterally;

- inconsistency of requirements between banks;
- lack of knowledge, expectations, and transparency within the process;
- different risk interpretations between banks in relation to third party propositions;
- banks being seen as risk adverse;
- a lack of usage scenarios and risk tiering to reference;
- differing perspectives on bank obligations to protect customer data held by third parties;
- banks having (high) requirements for security and third party vetting;
- difficulty finding legal and risk specialists;
- finding the right balance between banks and third parties in relation to liability and indemnities;
- insurance.

In addition to the above issues, two new themes have emerged in recent years:

- inconsistent pricing structures and absence of principles to guide fair pricing;
- internal bank policies will differ on the types of businesses which they will partner with. For example, a third party could have a bank account at Bank A, but be unable to get a bank account at Bank B which may make it difficult to enter into a bilateral arrangement with Bank B for access to API services.

Q19 **Does the API Centre's partnering project enable efficient partnering between banks and payment providers? If not, what would be required to enable efficient partnering?**

The partnering project has delivered some incremental improvements which have advanced both knowledge and efficiency through an updated template bilateral agreement and a new due diligence portal. However, efficient partnering requires a well-rounded accreditation framework and consistent terms of service between parties, defined through the lens of a risk-based model. The API Centre has not yet been able to address the issue of accreditation and development of standard partnering terms due to competition law issues. We look forward to engaging further with the Commerce Commission to look at options for progressing this work.

Q20 **Do you agree with how we have defined the interbank payment network? If not, how do you consider it should be defined?**

We do not understand why you have sought to define an 'interbank payment network'. It is not a term that is:

- defined in the Act, which refers to a retail payment network (which is limited to payments between consumers and merchants);
- used in the Financial Market Infrastructures Act 2021, which defines 'financial market infrastructure' as:
  a multilateral system for the clearing, settling, or recording of ….payments
- used in the payments industry internationally where, for example, the Principles for Financial Market Infrastructures refer to 'payment system' which is defined as:
  a set of instruments, procedures, and rules for the transfer of funds between or among participants; the system includes the participants and the entity operating the arrangement.

Internationally, the term network tends to refer to matters such as the communications networks that are used or even networks of regulators.

If the intention is to amend the Act to cover what has been described as an 'interbank payment network', we believe that it is better to use wording that is consistent with either the international principles or the Financial Market Infrastructures Act 2021. If the intention is to cover APIs and open banking, then we believe that any definition will also need to align with what is in the Customer and Product Data Bill.

It is our understanding that the outcome the Commerce Commission is seeking to achieve is for all registered banks (including Agency Banks and NBDTs) to sign up to, and offer, common APIs pursuant to an agreed partnership framework. If this is the case, Payments NZ does not believe the definition of the 'interbank payment network' is correct. The scope of the Act is only for payments by a consumer to a merchant for the supply of goods or services and, as outlined in section 5.27, an electronic credit is a payment instrument that is used far more broadly than just for consumer to merchant payments. Therefore, Payments NZ does not believe the Commerce Commission can designate an electronic credit, and the associated rules and participants in that network, when the payment instrument is used to meet so many different requirements.

In addition, Payments NZ believes the definition of the network, and subsequent designation of that defined network, will not achieve the desired outcomes – i.e. designating the rules of a payment instrument and clearing system will not enable an API framework that banks are required to join.

Q21	**Do you see any issues with how we have defined the interbank payment network? If so, what issues?**

We do see issues with the proposed definition of 'interbank payment network'.

As described above, the definition encompasses a payment instrument that is used far more broadly than the scope of the Act.

Furthermore, if the electronic credit rules were to be designated under the Act, approval from the Reserve Bank of New Zealand Te Pūtea Matua, and presumably the Commerce Commission would be required for any changes. The electronic credit rules and standards change over time and it is unclear how the approval process would be managed if there were more than one regulator, each with different objectives (i.e. soundness and efficiency vs competition and efficiency).

Given the rules for the electronic credit are far broader than payments between consumers and merchants, the risk of conflicting objectives between the two regulators appears high and it is not clear how this would work in practice. Payments NZ rules are not restricted to categories of payments such as an electronic credit within a retail environment. From an efficiency perspective the rules are written in a way to cater for all use cases and are not segmented to account for the specific requirements of the various customer sectors.

Q22	**Do you agree we have captured the correct payment products in the interbank payment network?**

We would like to better understand the purpose of the definition of 'interbank payment network'. If it is intended to bring more instruments into the scope of the

Act, then it will need to be narrowed to just those that are used predominantly for consumer to merchant payments.

It is unclear to us why the definition of the 'interbank payment network' includes payment instruments such as direct debits, bill payments, and automatic payments. Account to account payments in the retail payment system need to have certain attributes such as a status of cleared funds and irrevocability. For this reason, Payments NZ believes the only payment instrument that would be used for account to account payments is the electronic credit. The other payment types will not meet the requirements of merchants and could introduce risk into the system.

Q23 Do you agree we have captured the correct network operators of the interbank payment network?

This depends on the purpose of the definition. However, the most important operator in the retail payment system in New Zealand is the Reserve Bank as operator of the Exchange Settlement Account System. The other key operator is SWIFT.

As described above, it appears the outcome the Commerce Commission is seeking to achieve is for all registered banks (including Agency Banks and NBDTs) to sign up to, and offer common APIs pursuant to an agreed partnership framework.

If this is the objective, Payments NZ does not agree with the definition of network operators contained in the consultation document. Payments NZ does not believe it is necessary to include BECS rules, BECS participants or the SBI system if the Commerce Commission is seeking to utilise an API framework to enable account to account transactions within a retail environment.

Q24 Do you agree we have captured the correct class of participants in the interbank payment network?

This depends on the purpose of the definition. However, the Payments NZ rules are a multilateral contract between its participants and between Payments NZ and its participants. The proposed classes of participants within the consultation include payments service providers and indirect participants who are not party to the Payments NZ rules and who do not have direct access to BECS. It is unclear how these two groups could be captured within the definition of the 'interbank payment network'.

Q25 Do you agree we have identified the relevant interbank payment network rules? If not, what other network rules are relevant?

Payments NZ does not believe the BECS or SBI rules should be included in the network rules. Designation of these rules will not achieve the outcomes the Commerce Commission is seeking to achieve. In addition, rules that are deemed to be systemically important are likely to be designated by the Reserve Bank.

Q26 Do you consider there are any other regulatory requirements in other New Zealand laws that we should take into account in deciding whether to recommend that the interbank payment network is designated?

It is essential that any overlaps across a range of regulations are identified and managed to avoid unintended consequences.

It is noted that data plays an integral role in payments and Aotearoa is delivering a customer data right. Therefore, an API-enabled framework to support innovative pay-by-bank solutions, will overlap with:

- Customer and Product Data Bill – which aims to realise the value of certain data and promote competition and innovation for the long-term benefit of customers;
- the Privacy Act 2020 – the new Customer and Product Data Bill may include extensions of privacy principles and new consideration of ethical data (or action) use;
- a digital Identity framework and the interoperability with customer propositions offered by payment providers.

In addition, the Reserve Bank has oversight of the SBI system managed by Payments NZ and, if this is determined to be systemically important by the Reserve Bank, it will be designated pursuant to the Financial Market Infrastructures Act 2021.

Q27 **Do you consider that a designation of the interbank payment network is a useful first step towards enabling an environment where payment providers can launch innovative new options to make bank transfers in New Zealand? If not, why?**

For the reasons outlined above, we do not think that designation of the 'interbank payment network' would be a useful first step. It is noted that the 'interbank payment network' is formed by bank-managed platforms and enables many payment types. The API-enabled pay-by-bank experience is delivered as an overlay service that can use the 'interbank payment network' but could realistically use any underlying interbank infrastructure, e.g. a next generation system would provide a real-time infrastructure which API overlay services could use for account to account payments.

We believe that there would be considerable legal and practical difficulties in using the Act for what is being considered.

Q28 **How effective do you consider our regulatory powers would be at addressing the barriers set out in this paper?**

It is noted that regulation can often favour larger incumbent players and adversely impact the smaller innovative organisations that it seeks to support. As we have observed, we do not consider that designation of the 'interbank payment network' would deliver the outcomes which the Commerce Commission is seeking to achieve. However, we remain aligned with the Commerce Commission's view that there is a need for "reasonable access terms and conditions for partnering between banks and payment providers".

As part of our work to achieve this, the API Centre:

- has prioritised "efficient partnering" as its most important strategic objective;
- at a minimum, reviews the implementation plan for the delivery of standardised APIs annually;
- has the power to set implementation dates for any major or minor version of an API standard, as well as minimum implementation requirements such as channels, customer and account types or non-functional requirements;
- has robust governance and procedures that ensure that implementation plans meet the needs of all API standards users and ultimately lead to uptake of the standards (noting that setting dates is a balance of urgency and quality: too

much pressure to deliver more quickly may lead to exemption requests or software bugs which undermine the benefits to payment providers).

In terms of the proposed uses of regulatory powers in table 5.1, we note that:

- the API Centre has powers in relation to confidential information gathering and the framework has a high degree of transparency for API standards users in relation to exemptions and breach management;
- the API Centre remains focussed on facilitating efficient partnering and we look forward to engaging further with the Commerce Commission to look at options for progressing this work;
- the API Centre co-designs standards with industry, including technical, operational and customer standards. It is noted that these standards are independent from the 'interbank payment network' rules referred to in chapter 3. The concept of open banking is to enable third party secure access to the 'interbank payment network'.

In terms of the use of regulatory powers to prevent the barriers set out in table 4.1, we note that:

- the API Centre is able to publish implementation plans with milestones and minimum scope and requirements for the delivery of APIs;
- the API Centre terms and conditions include specific contractual obligations on API providers to meet implementation plans;
- the implementation plans provide increased certainty for third parties as to when API providers will deliver APIs;
- the API Centre has recently published an implementation plan which requires the five largest API providers to deliver a range of capability such as security standards, IAM integration, UI/UX in the mobile app, APIs, parenting capability and operational capability for customer and developer support;
- the milestones in the plan reflect the significance of the functionality being unlocked and the delivery effort involved;
- the API Centre is able to request implementation progress reports from API providers to monitor their progress and can share progress reporting dashboards with all API standards users for transparency.

We look forward to engaging further with the Commerce Commission to look at options for progressing work to deliver reasonable access terms and conditions for partnering between banks and payment providers.

Q29 **Do you consider that a designation of the interbank payment network, and the subsequent use of our regulatory powers, would promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand? If not, why?**

Payments NZ believes that long term competition and efficiency will come through the continued development of industry-led open API standards - customer, operational, partnering and technical.

The API-enabled "pay-by-bank" experience is an overlay service that will deliver greater choice for merchants and consumers. Pay-by-bank is enabled by technical, customer and operational standards, developed through robust governance and leveraging industry advisory groups.

The development of partnering standards, i.e. default terms for access to APIs and an accreditation framework, will enable efficient access to the network and the API Centre is able to support transparency and deliver industry milestones.

The API Centre wishes to avoid complex coexistence of regulators, and accreditation regimes (which are likely to favour larger organisations).

Payments NZ is also working on its next generation payments initiative designed to deliver greater opportunities for participation through open and safe platforms underpinned by best governance practices.

Steve Wiggins
Chief Executive
Payments NZ Limited