

21 March 2024

Scott McKinnon, Director Prudential Supervision  
Via email

Dear Scott

## **Consultation on a proposed recommendation to designate the interbank payments network**

1. As you are aware, we are currently progressing work on a potential recommendation to the Minister of Commerce and Consumer Affairs to designate the Interbank Payment Network under the *Retail Payment System Act 2022* (the **RPS Act**). This process requires us to consult with the Reserve Bank of New Zealand (**RBNZ**) before making a recommendation to the Minister that any retail payment network that involves payments between different bank accounts be designated.
2. To assist you in responding to this consultation, this letter lays out:
  - 2.1 background on our work to promote a thriving application programming interface (**API**) enabled payments ecosystem,
  - 2.2 why we are consulting with you,
  - 2.3 our proposed scope of the designation of the Interbank Payment Network, and
  - 2.4 our continued commitment on working together on payment regulation matters.

### **Background**

3. On 22 February 2024 we published an open letter 'Update on our Payments Between Bank Accounts work'. The letter explained that we will be consulting on a proposed designation of the interbank payment network in the coming months and set expectations of banks and Payments NZ to further the development of a thriving API enabled payments ecosystem.<sup>1</sup> This decision was supported by the feedback we

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<sup>1</sup> This letter can be found here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0017/344132/Retail-Payment-System-Update-on-our-Payments-Between-Bank-Accounts-work-22-February-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0017/344132/Retail-Payment-System-Update-on-our-Payments-Between-Bank-Accounts-work-22-February-2024.pdf)

received on our 'Payments Between Bank Accounts – request for views paper, published 31 July 2023.<sup>2</sup>

4. As we have discussed, an API enabled payments ecosystem sits alongside real-time payment capability and data rich payments as some of the key pieces of infrastructure needed to modernise the New Zealand payment system. We consider a thriving API enabled payments ecosystem would support the purpose of the RPS Act to promote competition and efficiency in the retail payment system for the long-term benefit of consumers and businesses. This would be achieved by allowing innovative ways to pay that will compete with existing card-based payments, reducing payment related costs to merchants, and surcharges to consumers.<sup>3</sup>

### **Designation under the Retail Payment System Act 2022**

5. Under the RPS Act a retail payment network can be designated in a similar way to how a Financial Market infrastructure (**FMI**) is designated under the *Financial Market Infrastructures Act 2021 (FMI Act)*. However, we understand there are a few key differences:
  - 5.1 a retail payment network is defined more broadly than an FMI,
  - 5.2 a participant of a retail payment network is defined more broadly than a participant of an FMI, and
  - 5.3 a designation of a retail payment network under the RPS Act does not automatically impose any regulations or obligations on the participants of the network.

#### *A retail payment network*

6. A retail payment network is broader than an FMI. A retail payment network means all the participants, arrangements, contracts, and rules that facilitate a class of retail payment.
7. The term “participant” is defined more broadly under the RPS Act than under the FMI Act. Under the RPS Act, a participant is any person that provides or facilitates the provision of payment services in the network, except merchants.<sup>4</sup> This definition includes payment services providers, switch infrastructure services providers, and the providers of any other infrastructure service (such as electricity or fibre) that is required for the retail payment to occur.
8. Any retail payment network that involves payments between different banks is likely to use the financial market infrastructure required to clear and settle payments

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<sup>2</sup> This paper can be found here: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf)

<sup>3</sup> In accordance with section 3 of the Act.

<sup>4</sup> Payment services means services that facilitate retail payments.

between two different banks: Settlement Before Interchange (SBI) and Exchange Settlement Account System (ESAS). These pieces of infrastructure are used in a range of retail payment networks including the Visa and Mastercard networks, the Eftpos network and others. This means that the FMI operators and the participants of the FMI are also considered participants of those retail payment networks.

*Process for the designation of a retail payment network*

9. The RPS Act prescribes a designation regime, under which any retail payment network (other than the cash retail payment network) may be designated by Order in Council by the Governor-General on the recommendation of the Minister.<sup>5</sup>
10. The Minister may recommend to the Governor-General that a retail payment network be designated only after receiving a recommendation from the Commission. In deciding whether to make a recommendation, the Minister may accept or reject the Commission's recommendation, request the Commission reconsider any matter, or make any other decision the Minister considers is in the public interest.<sup>6</sup>
11. Before we make a recommendation to the Minister that a network be designated, we are required by statute to:
  - 11.1 consult with RBNZ if the network comprises any part of a system that is a designated FMI within the meaning of the FMI Act<sup>7</sup>, and
  - 11.2 consult affected operators of the network about the proposed designation (including the Commission's reasons for proposing to make a recommendation).<sup>8</sup>

*A designated retail payment network*

12. The designation of a retail payment network does not automatically impose any regulations or obligations on the operator of the network or any of the participants of the network. A designation, however, does allow for the Commission to impose regulation on the operator of the network or any of the participants of the network, if we consider it appropriate to do so but on the condition that prior to any regulation we consult with affected persons.
13. There are currently four designated networks, the Visa and Mastercard debit and credit networks.<sup>9</sup> Given these networks facilitate payments between different banks there is a range of infrastructure used. Some of that infrastructure is a focus of our work and some is considered wider infrastructure. This wider infrastructure includes payment infrastructure such as SBI and ESAS as well as electricity and telecommunications infrastructure. This means that the operators of SBI and ESAS

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<sup>5</sup> Section 11(1) of the Act.

<sup>6</sup> Section 11(2) of the Act.

<sup>7</sup> Section 20 of the FMI Act.

<sup>8</sup> Section 13 (1) of the Retail Payment System Act 2022

<sup>9</sup> Schedule 1, Subpart 2 of the Retail Payment System Act 2022

are participants in the designated network, but only in so far as their infrastructure is used for some of the payments in these networks.

### **Regulation under the Retail Payment System Act 2022**

14. A network designation under the RPS Act does not automatically impose any regulations or obligations on the operators or participants. A designation means we can impose specific forms of regulation on the network operator/s or participants if we consider it appropriate to do so. A network designation allows us to:
  - 14.1 issue network standards for designated networks<sup>10</sup>
  - 14.2 give directions about designated network rules.<sup>11</sup>
15. Both standards and directions are specific, in that they need to be applied to either the network operator and/or specific participant/s of a retail payment network. They are not general in the sense that the standard or direction does not automatically apply to a range of retail payment networks in the way that the standards under the FMI Act work. Nor do standards or directions apply to all participants, only those that are named in the standards or directions.

### *Current regulation*

16. Currently only Mastercard and Visa debit and credit networks are designated. A network standard applies to each of these networks that places limits on interchange fee levels.<sup>12</sup> This network standard imposes obligations on participants only in so far as they have a role in interchanges, primarily this is the participant classes of acquirers and issuers.

### **Why we are consulting with you**

17. We consider that the Interbank Payment Network comprises part of a system that is a designated FMI as ESAS is a designated FMI. We also consider that SBI, which may be subject to a future designation under the FMI Act, to also be network infrastructure within the Interbank Payment Network.
18. Given the way that definitions work under the RPS Act, the operators of these FMI will be participants in any retail payment network that involves payments between two bank accounts. This does not mean they have any regulation or obligations imposed on them.
19. The focus of our proposed designation, if we determine a recommendation to the Minister of Commerce and Consumer Affairs should be made, are the retail banks rather than the Reserve Bank of New Zealand as operator of ESAS. As detailed later in this letter, at this juncture we have no intent to use the proposed designation to

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<sup>10</sup> Section 20 of the Retail Payment System Act 2022

<sup>11</sup> Section 24 of the Retail Payment System Act 2022

<sup>12</sup> Schedule 1 of the Retail Payment System Act 2022

regulate ESAS or SBI. Our current intentions with the proposed designation are to focus on the development of a thriving API enabled payments ecosystem.

20. If for any reason we were to explore whether to apply regulation to ESAS or SBI infrastructure, we would consult with you directly, together with your stakeholders, on any operational matters and are required by our legislation to consult with participants before we impose any regulations.
21. Whilst we are unable to predict what any future regulation (if there is any) might look like, we will work with you to ensure that, where possible, any regulation that may affect ESAS or SBI infrastructure meets both our objectives under the RPS Act and your objectives as the regulator of that infrastructure.

#### *Current FMI designations*

22. The only currently designated FMI of relevance is ESAS RBNZ's system for processing and settling payments between financial institutions. However, we are also consulting on the impact of a potential designation on SBI, the clearing house for payments between financial institutions prior to interchange, as we understand the International Monetary Fund's (IMF) analysis has indicated that some of Payments NZ systems are systemically important, including the SBI system.<sup>13</sup> Even if SBI is not designated, we still consider it appropriate to consult with RBNZ on the impacts to SBI given the importance of SBI to the payment network.
23. As mentioned above, ESAS and SBI are considered network infrastructure and their operators are participants in these networks.

#### **Proposed designation**

24. The Act sets out that the content of a retail payment network designation order must specify both the network and at least one person that is an operator of the network. The designation order may also specify the payment products in the designated network, documents that set out some or all the network rules, and the classes of participants.

#### **Proposed designation**

25. We propose that the interbank payment network be defined as including all bank payment instruments between Registered Banks or within a Registered Bank for the payment of goods or services initiated by either a consumer or a merchant as payee and where payment instructions are sent directly to the payer's bank. This includes all payment instruments, such as direct credits and direct debits, irrespective of the method of initiation and (as an example) a consumer either directly or indirectly initiating a payment through a third-party.

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<sup>13</sup> International Monetary Fund "New Zealand Financial System Stability Assessment" (8 May 2017) p15-16 available at: <https://www.imf.org/en/Publications/CR/Issues/2017/05/08/New-Zealand-Financial-SectorAssessment-Program-Financial-System-Stability-Assessment-44886>

**Proposed designation of the interbank payment network**

1. The retail payment network known as interbank payment network of which—
  - 1.1. the person known as Payments New Zealand is a network operator;
  - 1.2. the network rules include the rules (as updated from time to time) called:
    - 1.2.1. the BECs Rules that relate to payment instruments,
    - 1.2.2. the Payments NZ membership rules that relate to the BECS participants,
    - 1.2.3. the Payments NZ membership rules that relate to the API Centre members, and
    - 1.2.4. the API Centre API Standards and non-functional guidelines, frameworks and polices;
  - 1.3. The payment products include all BECS governed payment instruments; and
  - 1.4. The participant classes include:
    - 1.4.1. Registered banks in NZ, and
    - 1.4.2. Third party payment providers

This designation continues in force until the date that is 10 years after the date on which this subpart commences.

26. Some important aspects of the proposed designation that will be of interest are:
  - 26.1 We have focused on the payment instruments not the clearing system. We think this will future proof the designation in the cases that:
    - 26.1.1 There are new payment instruments. For example, there may be unmet demand for a request to pay payment instrument.
    - 26.1.2 An industry-led next generation payments system results in the payment instruments using different infrastructure to SBI.
  - 26.2 We have listed a non-exhaustive list of the rules we consider relevant to our interest in this network:
    - 26.2.1 *the API Centre API Standards and non-functional guidelines, frameworks and polices* are the technical aspects which govern the APIs,

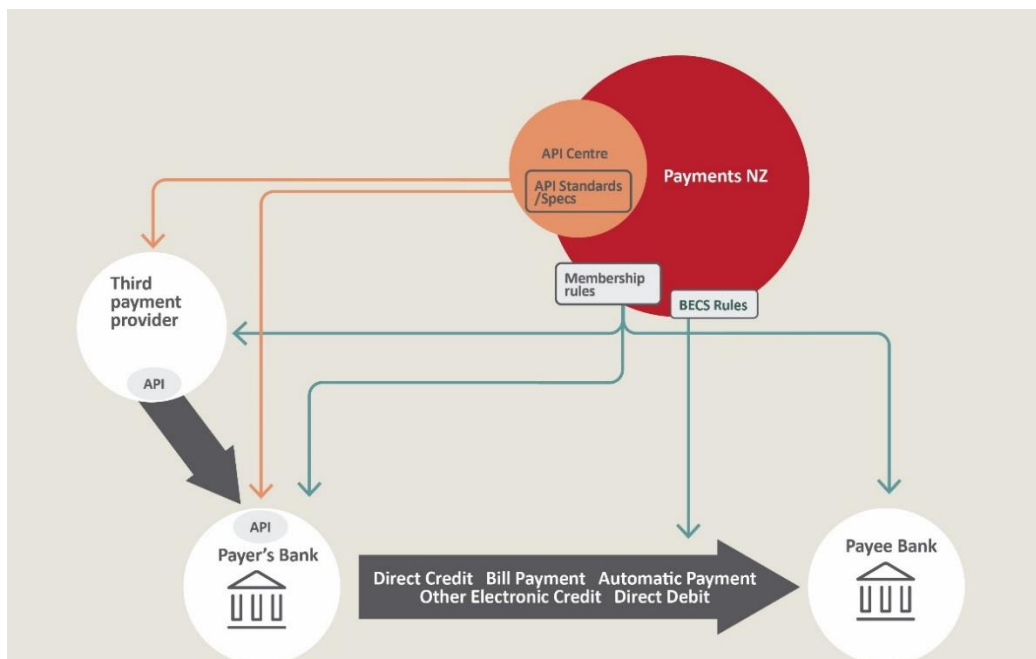
26.2.2 *the Payments NZ membership rules that relate to the API Centre members.* These rules relate to the third party providers and may be of importance in how the minimum requirements are to be overcome,

26.2.3 *the Payments NZ membership rules that relate to the BECS participants* these rules relate to the registered banks and may be of importance in how the minimum requirements are to be overcome, and

26.2.4 *the BECs Rules that relate to payment instruments* are the rules that provide for the payment instruments and thus payments to occur through the interbank payment network.

27. The proposed content of the designation of the Interbank Payment Network is also represented in Figure 1.

**Figure 1: Diagram of the proposed interbank payment network**



Our interest in the network

28. Our interest is in the interaction between third parties and banks, not between the banks and the infrastructure they use, eg, SBI and ESAS. We are focused on the aspects relating to the sending of payment instructions rather than the instructions themselves or the wider infrastructure that processes the instructions.

**The FMI and RPS regimes appear complementary and any potential overlap would be intentional**

29. As mentioned earlier, a designation under the RPS Act imposes no obligations on the operator or participants (including infrastructure providers) of the designated network.

30. If the interbank payment network was designated as we propose, we do not consider there to be any regulatory overlap that would impact ESAS and SBI between the FMI and RPS Acts. We have no plans, nor see any need at present, for regulation of either ESAS or SBI under the RPS Act. Our focus would be on the interaction between the class of participants known as third parties and banks. It may be that regulation impacts Payments NZ as an operator of the Interbank Payment Network, but likely only in so far as it relates to their rules or with regards to the API Centre.
31. In our recent letter, and expanded upon in our draft consultation paper that have enclosed with this letter, we outlined some potential uses of our regulation making powers which may be needed.<sup>14</sup> As you will see, these are unlikely to overlap with regulations under the FMI Act because they mostly relate to potential regulation of the banks not the FMIs.
32. If, in future, we consider there is a need to regulate ESAS or SBI as it relates to a designated network, we would consult with you along with other affected persons. Our aim would be to ensure the purposes and principles of the RPS Act are not, wherever possible, in conflict with your aims and obligations under the FMI Act and be clear that if there is any regulatory overlap, it is intentional by design.

**Feedback we are seeking from you:**

33. We would appreciate your response to the following questions:
  - 33.1 Do you support our work to promote a thriving API enabled payment ecosystem?
  - 33.2 Do you agree with our assessment that ESAS as wider infrastructure is part of the Interbank Payment Network?
  - 33.3 Beyond our regular engagement on payments related matters, is there anything additional the Commission and RBNZ can do as we continue to work together to ensure that each is aware of any future planned regulatory obligations that might affect any network or system designated under our relevant powers?
34. We also welcome any further comment or information that you consider relevant to our decision to recommend designation of the Interbank Payment Network, including any feedback you have on our draft reasons paper and associated consultation questions.

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<sup>14</sup> See figure 2 and para 16 of our 'Update on our Payments Between Bank Accounts work' letter.]



## **Our ongoing engagement**

### **Shared interests**

35. Given our shared interest in getting reliable and efficient payments that better met the needs of all New Zealanders, there are a number of areas we will continue to engage with you on. These currently include:
- 35.1 Understanding how well consumers and merchants needs are being met by the current payment options through our monitoring work and your Money and Cash team's work;
  - 35.2 Understanding how well consumers and merchants needs are being met by the current access arrangements in place with FMIs through our monitoring work and your FMI work; and
  - 35.3 Supporting industry modernisation of payments infrastructure including next generation payments which are real-time, data rich and offer greater functionality.
36. We will continue to engage with you as we progress this work and develop our understanding of the potential use of regulatory powers.

### **Payments vision work**

37. In addition to the above, we are also looking forward to the next phase of work in regard to the CoFR Payments Vision. This includes further understanding the sequencing of our relevant work programmes and joint industry engagement.

### **Next steps**

38. We plan to publish this letter and your response alongside our consultation paper to demonstrate that we have consulted with you.
39. Thank you again for your continued collaboration and collegiality. We look forward to our ongoing engagement on payments matters as we support each other in jointly meeting the purposes of our respective Acts and continue our work towards delivery of the CoFR Payments Vision.

Ngā mihi nui

Matthew Lewer  
Head of Payments  
**Commerce Commission**