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Retail Payment System

**Our reasons to support our
recommendation to the Minister to
designate the interbank payment
network – August 2024**



Associated documents

Publication date	Reference	Title
27 March 2024	ISBN no. 978-1-991287-02-1	Consultation on our proposal to recommend designation of the interbank payment network
22 February 2024		Update on our Payments Between Bank Accounts work
31 July 2023	ISBN no. 978-1-991085-30-6	Request for views on payments made over the interbank payment network

Glossary

Term	Definition
The Act	Retail Payment System Act 2022.
API	An Application Programming Interface (API) is a set of routines, protocols, and tools for building software applications. An API specifies how software components should interact.
API provider	A registered bank or non-bank deposit taker that provides APIs to a payment provider. In this paper, the terms API provider and bank are used interchangeably.
Automatic payment	A type of interbank payment instrument. An automatic payment is an instruction from the consumer to their bank to pay a fixed amount at a regular frequency from the consumer's nominated bank account to another bank account.
BECS	The Bulk Electronic Clearing System (BECS) governs how a range of bulk electronic transaction types are made between its participants. It governs how direct debits, automatic payments, bill payments, and direct credits work.
Bill payment	A type of interbank payment instrument. A bill payment is a one-off payment similar to a direct credit but with additional functionality. This functionality helps to link the consumer's payment with their biller account and to support the biller's reconciliation.
Commission	The Commerce Commission.
Consumer	A person (including any individual or business) that acquires good or services from a merchant.
Consumer Data Right (CDR)	A legal framework that requires businesses that hold data (data holders) to share prescribed data that they hold about customers (customer data) with trusted third parties (accredited requestors) with the consent of the customer and otherwise described in this paper as the Consumer and Product Data Bill.
Designated network	Any retail payment network that is: (a) declared to be a designated retail payment network under subpart 1 of Part 2 of the Act; or (b) designated under an initial designation of the Act.
Designation order	The Order in Council made by the Governor-General declaring a retail payment network to be a designated network.
Direct credit	A type of interbank payment instrument. A direct credit is an instruction sent from the consumer to their bank to make a one-off payment from the consumer's nominated bank account to another party's bank account or other parties' bank accounts.
Direct debit	A type of interbank payment instrument. A direct debit enables another party (the initiator), once authorised, to take payments from the consumer's nominated bank account electronically.

Direction	A direction of the Commission under subpart 3 of Part 2 of the Act in relation to network rules.
Electronic credit (other)	Other types of interbank payment instruments, including point of sale (POS), social welfare, automatic teller machine (ATM), foreign exchange, and money market payment instruments.
Interbank payment network	See Chapter 5 paragraph 5.7.
Five largest banks	ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand, Kiwibank Limited, and Westpac New Zealand Limited.
Merchant	A supplier (within the meaning of the Fair Trading Act 1986) of goods or services to consumers.
Minister	Minister of Commerce and Consumer Affairs.
Network	A retail payment network.
Network operator	In relation to a retail payment network, means any person that is or does one or more of the following: (a) is wholly or partly responsible to the participants (or any of them) for the network rules: (b) operates or manages the network or the core infrastructure of the network.
Participant	A person that is a network operator or any other service provider.
Partnering	The arrangement between a bank and a third party for access and use of a bank's APIs.
Payment	A transfer of monetary value.
Payment instruments	Personalised forms of payment and/or sets of procedures between a payer and payee used to initiate a payment.
Payment method	The form in which a consumer makes or is able to make a retail payment (for example, using a card online or without contact in person).
Payment product	A class of retail payment within a retail payment network (for example, personal or commercial retail payments within a retail payment network).
Retail payment	A payment by a consumer to a merchant for the supply of goods or services.
Retail payment network	The participants, arrangements, contracts, and rules that facilitate a class of retail payment.
Retail payment system	The system comprising all retail payment networks.
SBI	Settlement Before Interchange (SBI) is a payment settlement and interchange system used by BECS and Consumer Electronic Clearing System (CECS) participants (primarily banks).

Standard	A network standard or a merchant surcharging standard.
Supplier	In relation to goods, any person who supplies (or resupplies) goods by way of gift, sale, exchange, lease, hire, or hire purchase; and in relation to services, any person who provides, grants, or confers a service.
Third party	Third parties are organisations that want to use standardised API endpoints provided by registered API providers.

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Chapter 1 Introduction

Purpose

- 1.1 The Commission is the retail payment systems regulator. Under the Retail Payment System Act 2022 (**the Act**), we are mandated to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers. Through this role we are creating the conditions for competition to drive efficiency for consumers and businesses.
- 1.2 This Statement of Reasons contains the Commission's reasons for recommending to the Minister of Commerce and Consumer Affairs that the interbank payment network should be designated under the Act.
- 1.3 We have identified the need for increased competition and innovation in the interbank payment network, which is an integral part of the retail payment system and key to the delivery of open banking. Designating this network will enable us to use our full regulatory tools to unlock benefits for consumers, businesses and the economy and achieve the purpose of the Act. The expected increase in competition and innovation can be provided by the development and adoption of new, safe, low cost and accessible open banking payment solutions, including viable alternatives for traditional Eftpos to compete with Visa and Mastercard.
- 1.4 Progress on the delivery and adoption of open banking payment solutions on the interbank payment network has been slow and without designation there are barriers that will continue to inhibit delivery and adoption. Designation of the interbank payment network is needed now to enable the Commission, as the competition and payment system regulator, to remove those barriers and deliver better and faster open banking payments in ways that complement and enhance the Consumer Data Right (**CDR**) while freeing up the Ministry of Business, Innovation and Employment (**MBIE**) to focus on the economy-wide rollout of the CDR. A payments designation would allow faster progress to be made on energy, as the next sector to be designated.
- 1.5 In particular, a designation made quickly would allow us to accelerate progress ahead of the full CDR implementation. It would also allow us to action areas not covered by the CDR (such as supporting merchant acceptance of new payments methods and access to digital wallets). More generally, for open banking to succeed, it will be important for a regulator to be actively engaged with the industry to set expectations, drive progress, including beyond the currently envisaged use cases, and remove barriers as they appear. Our role as payments regulator would support that.

Our work to date

- 1.6 We have been the payments systems regulator since May 2022, and we have taken an active interest in the interbank payment network for the last 18 months. We have consulted widely with industry participants and interested stakeholders on our proposal to recommend designation of the interbank network. This has included:
- 1.6.1 our July 2023 Requests for Views Paper, which set out our preliminary thoughts for the possible designation of the interbank payment network;
 - 1.6.2 our open letter in February 2024, which set out our expectations and our view of the minimum requirements for the delivery of open banking payments;
 - 1.6.3 our March 2024 Consultation Paper, which set out our draft reasons for designation and our draft designation order;
 - 1.6.4 meetings with banks, fintechs, and other stakeholders; and
 - 1.6.5 consultation with Reserve Bank of New Zealand (**RBNZ**) and MBIE.
- 1.7 Our recommendation to designate the interbank payment network is made after considering all responses from stakeholders to this consultation.

Structure of these reasons

- 1.8 This Statement of Reasons sets out:
- 1.8.1 How open banking provides an opportunity for better outcomes for consumers and businesses (Chapter 2).
 - 1.8.2 Why we consider designation is needed to achieve the full benefits of open banking (Chapter 3).
 - 1.8.3 The mandatory considerations we have taken into account in making this recommendation (Chapter 4).
 - 1.8.4 Our definition of the network that we recommend being designated and a recommended designation order (Chapter 5).
 - 1.8.5 Our reasons for the network definition and the recommended designation order contents (Chapter 6).
 - 1.8.6 The legal framework and process for making a designation under the Act (Attachment A).

Chapter 2 Open banking provides an opportunity for better outcomes for consumers and businesses

Purpose and structure of this chapter

- 2.1 A thriving open banking system provides for greater competition and efficiency in the payment system, with significant benefits to consumers, businesses and the economy. However, New Zealand does not have a thriving open banking system and we see barriers that are inhibiting and will continue to inhibit the successful delivery and adoption of open banking.
- 2.2 The CDR regime being developed by Government through the Customer and Product Data Bill (**CPD Bill**) will support the delivery of open banking. However, the CDR will not address all the barriers to the delivery and adoption of open banking.
- 2.3 This chapter discusses:
- 2.3.1 how open banking is an opportunity to deliver significant benefits to consumers and merchants;
 - 2.3.2 the barriers to the successful delivery and adoption of open banking in Aotearoa; and
 - 2.3.3 the barriers to open banking that will not be addressed by the CDR.

Open banking payments are an opportunity to increase competition and efficiency

- 2.4 A thriving open banking system provides for greater competition and efficiency in the payment system, with significant benefits to consumers, businesses and the economy.
- 2.5 The New Zealand retail payment system is not as competitive or efficient as it could be. There is a lack of competitive pressures on participants leading to additional costs to the New Zealand economy. We estimate that efficiency gains in the retail payment system could be worth around \$2 billion per annum in added value (GDP) to the Aotearoa New Zealand economy.¹ Open banking payments are one way to realise some of this added value.

¹ This is approximately half a percent of New Zealand's annual GDP. The estimate comes from triangulating Nordic and European Central Bank empirical studies (among others) with our appraisal of the New Zealand context and information. International studies establish an overall social cost estimate for highly efficient payment systems as approximately 0.5% of GDP. For example, see European Central Bank "The Social and Private Costs of Retail Payment Instruments – A European Perspective" (September 2012), including pages

- 2.6 Open banking has become increasingly prevalent overseas and the potential competition and economic benefits of open banking in New Zealand are significant and widely accepted. Payments are expected to be the most widely used element of open banking. This is why Australia is now moving to add payments functionality to its banking CDR regime.
- 2.7 The success of open banking will therefore be largely determined by the delivery and adoption of open banking payments options, that are safe, low cost, functional, adaptable to an expanding range of use cases and are widely adopted by businesses and consumers. Done properly, open banking payments, which are API enabled payments, have significant potential to reduce costs and enhance productivity in the economy, delivering benefits to consumers and merchants in New Zealand that include:
- 2.7.1 **Better payment options for consumers.** For example, alternatives to traditional Eftpos that can compete with Visa and Mastercard schemes – online and in person, with payments made and accepted using the consumer and merchant’s device of choice.
- 2.7.2 **Safer payment options.** These payments options will be more secure than current alternatives which require the consumer to provide their username and password to the third party. They are also unlikely to be susceptible to the types of scams which trick the consumer accidentally into paying the wrong account number. This could be very helpful in combating invoice fraud and other situations where the lack of confirmation of payee functionality puts the consumer at risk.
- 2.7.3 **Better payment options for businesses.** For example, in the United Kingdom, Xero has seen rapid adoption of a solution that allows businesses to initiate payments from inside their accounting software. These options can improve productivity, efficiency and reduce the incidence of employee fraud and scams perpetuated against businesses.

The considerable unmet demand for open banking payments

- 2.8 It is broadly agreed that there is significant unmet demand in New Zealand for innovative payment methods. This unmet demand is demonstrated by the:
- 2.8.1 uptake of the Blink PayNow service used by Sharesies;² and

6 and 35 to 36, available at: <https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp137.pdf>. Given the lack of competitive pressures we conservatively estimate New Zealand's payment system to have average efficiency, incurring costs of approximately 1% of GDP.

² See Blinkpay “Sharesies case study”, available at: <https://media.blinkpay.co.nz/hubfs/case-studies/Sharesies-case-study.pdf?hsLang=en>.

- 2.8.2 widespread use of POLi Pay.
- 2.9 Blink PayNow is an API enabled interbank payment option provided by Blinkpay that enables Sharesies users to make bank transfer payments that are "faster" to their Sharesies investment wallets. Despite this payment option being limited only to customers of BNZ, Westpac or ASB, Blinkpay reported over \$1 million in transactions through Blink PayNow in the first month post launch.³
- 2.10 POLi Pay provides consumers with a correctly prefilled bank transfer to the merchant for their approval. POLi Pay uses sub-optimal payment methods because it requires customers to give POLi Pay their online banking username and password. Despite this, POLi Pay has reported an average monthly customer usage of 500,000 consumers.⁴
- 2.11 We also understand that there is demand for innovative interbank payment solutions for online payments for recurring subscriptions and regular bill payments, but the current functionality of the interbank payment network is not meeting these increasing needs of consumers and businesses.
- 2.12 Although not completely comparable, examples of more innovative interbank payment networks that provide for these types of payments exist in other countries. The growth in these overseas examples provide an indication of the potential benefit to merchants and consumers of alternative interbank payment methods.⁵

The cost of New Zealand's payment system is increasing

- 2.13 The cost of payments to the New Zealand economy is increasing due to an increasingly larger share of payments going through the Visa and Mastercard networks and the decline of the cheaper Eftpos option.

³ Blinkpay "Sharesies case study", page 11. Available at: <https://media.blinkpay.co.nz/hubfs/case-studies/Sharesies-case-study.pdf?hslang=en>.

⁴ Merco Ltd. "Merco Ltd. Submission on Retail Payments Between Bank Accounts" (25 September 2023), page 6, question 9. Available at: https://comcom.govt.nz/_data/assets/pdf_file/0031/332788/MercoSubmission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf.

⁵ Joe Garner et al. "Future of Payments Review" (UK) (November 2023). Pages 59 - 60. Available at: https://assets.publishing.service.gov.uk/media/6557a1eb046ed400148b9b50/Future_of_Payments_Review_report.pdf

- 2.14 Eftpos provides a low cost and widely used payment option, applying competitive pressure on the other in-person card payment options.⁶ However, traditional Eftpos card use is in decline due to consumer preferences and disincentives on the banks to issue traditional Eftpos cards.
- 2.15 We expect the volume of transactions on the Eftpos network will continue to decline relative to the volume of transactions on the Visa and Mastercard networks. This may be hastened through our recent work to reduce surcharges. If surcharges for contactless debit payments are reduced, we expect a large volume of transactions will migrate from Eftpos to the Visa and Mastercard debit networks. The Eftpos network owners are aware of this potential and are innovating towards open banking payments in response.

Submissions on the competition and efficiency benefits from open banking payments

- 2.16 Payments NZ supported the outcomes the Commission is looking to achieve.⁷
- 2.17 Akahu, Banzpay, Revolut, and Worldline agree with our characterisation of the innovative new products and services, and the potential benefits for consumers and businesses.⁸
- 2.18 Worldline discussed the potential competition and efficiency benefits from open banking payments.⁹ Worldline considered replacing Eftpos should be a focus:
- Rather than looking backwards to 'save' Eftpos, we should be focussing on what the modern replacement would be and how we plan for that. We think a potentially valuable policy option has been left out of the proposal; namely how we practically move forward and at the same time manage the exit of Eftpos.¹⁰
- 2.19 Westpac considered an open banking system must be economically sustainable to be successful. It noted Eftpos as an example of a free payment service which has resulted in a lack of investment and innovation.¹¹

⁶ Commerce Commission "Retail payment system – Request for views on payments made over the interbank payment network" (31 July 2023) at para 2.16. Available at: 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

⁷ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2. For all published submissions see Commerce Commission, <https://comcom.govt.nz/regulated-industries/retail-payment-system#projecttab>.

⁸ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, Q11 & Q15.

⁹ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 10.

¹⁰ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 7, para 24.

¹¹ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 6, para 3.19.

- 2.20 ANZ considered there was insufficient evidence about the benefits and cost reductions open banking payments would provide relative to the existing network.¹²
- 2.21 We note submitters comments on the nature of the interbank payment network are addressed from 4.49.

Response to submission on the competition and efficiency benefits from open banking payments

- 2.22 We agree with Worldline's submission that enabling a viable alternative to traditional Eftpos should be a focus. We also agree with some aspects of Westpac's submission. We consider a lack of investment and innovation are factors contributing to Eftpos's decline as well as changing consumer preferences and the disincentives on banks to issue Eftpos cards.
- 2.23 We disagree with ANZ's submission. We consider there is sufficient evidence to show open banking payments will provide significant competition and efficiency benefits to the retail payment system. We consider this is well established within industry and the literature. We note that industry has recently described the significant public benefits that would be expected by increasing competition through open access to the interbank payment network. For example, Payments NZ's recent Authorisation Application, on behalf of API providers (banks) and third parties states:¹³

The purpose of open banking is to increase competition and innovation in banking, payments and financial data services, leading to better products and services for customers (...)

[A]ny competitive detriments that might arise from the Proposed Arrangement will clearly be outweighed by the significant public benefits that arise from the timely introduction of open banking services in Aotearoa New Zealand.

- 2.24 We also note that the economic benefits from the broad adoption of open banking, including open banking payments, are generally expected to be significant.¹⁴

¹² ANZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, Q 11.

¹³ Payments NZ Limited Authorisation application (16 January 2024), paras 4 and 14, https://comcom.govt.nz/_data/assets/pdf_file/0026/340586/Payments-NZ-Limited-Authorisationapplication-16-January-2024.pdf.

¹⁴ For example, according to one study, advanced economies such as the UK could stand to gain 1.5% of GDP in 2030 from the broad adoption of open-data for finance ecosystems. (For this purpose of this paper we have treated open-data for finance as being broadly similar to open banking). See, McKinsey Global Institute. "Financial data unbound: The value of open data for individuals and institutions" (June 2021), page iv. Available at: <https://www.mckinsey.com/~media/mckinsey/industries/financial%20services/our%20insights/financial%20data%20unbound%20the%20value%20of%20open%20data%20for%20individuals%20and%20institutions/financial-data-unbound-discussion-paper-june-2021.pdf>.

The barriers to open banking

2.25 Barriers inhibiting the successful delivery and adoption of open banking payments will continue to exist without designation.

2.26 There are a number of minimum requirements that must be met before open banking payments can thrive:¹⁵

2.26.1 Third party providers that are incentivised to develop products and services for consumers and merchants using APIs.

2.26.2 Successful delivery of open banking through:

2.26.2.1 The deployment of the APIs by banks through which third parties use to connect to banks to initiate payments on behalf of the consumer.

2.26.2.2 The ability for third parties to use the APIs on reasonable commercial terms.

2.26.3 Successful adoption of open banking payments. Consumers and merchants demand and adopt these API enabled products and services and have the confidence and trust to switch to them from existing payment products.

2.27 These minimum requirements have not all been met. While there are a range of fintechs ready to go, there are shortcomings in the delivery of open banking and there are barriers that may prevent the adoption of open banking payments.

Barriers to the delivery of open banking payments

2.28 The delivery of open banking has picked up momentum in the last year with the largest four banks deploying basic payment initiation APIs. However, there are still shortcomings with the delivery of open banking including:

¹⁵ We published our understanding of what we believe are the minimum requirements to allow a thriving API enabled payment ecosystem in our open letter earlier this year. Our current view of the minimum requirements now place greater emphasis on the adoption of open banking payments. For our open letter, see Commerce Commission "Retail Payment System - Update on our Payments Between Bank Accounts work" (22 February 2024). Available at: 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

- 2.28.1 Slow deployment by some banks of the APIs that have been designed. We consider 90% coverage of consumers would support the development of commercially viable API enabled payment products. For the most basic open banking payment this will not occur until 2026. While there may be rationale for providing smaller banks more time there is still a debate about the length of this delay.
 - 2.28.2 The lack of a commitment by banks to deploy all the elements of the APIs. Some consumer authentication methods are not being offered by all big four banks. There is not a clear timeframe for the deployment of all standards that have been designed.¹⁶
 - 2.28.3 The lack of a transparent plan for developing further APIs. There has been a large amount of work on designing APIs which are considered world leading in some respects and are a good starting place for further needed functionality. However, the currently designed standards do not cater for instore or bulk payments. More generally, we need ongoing innovation in this area.
 - 2.28.4 The limited partnering by most banks with third parties. ANZ provided access to Worldline in 2022 and since then no new fintechs are using its APIs.¹⁷
- 2.29 There are a range of reasons why industry has not delivered open banking. We discuss these further in Chapter 4, but key points include:
- 2.29.1 Banks' mixed incentives to create and support open banking payments.
 - 2.29.2 That ongoing collective action is required by banks for the delivery of open banking.
 - 2.29.3 The perceived or real risk of being in breach of the Commerce Act co-ordinated conduct provisions by having conversations that would improve progress. While Payments NZ has applied to be authorised to have one of these such conversations, we are aware of other areas of work that have not yet resulted in authorisation applications.

¹⁶ Versions 2.3 and 3 of the standards have minimum implementation plan.

¹⁷ API Centre - Payments NZ "Find a provider or third party". Available at: <https://www.apicentre.paymentsnz.co.nz/join/api-standards-user/current-standards-users/>.

Barriers to adoption of open banking payments

2.30 We consider there are barriers to adoption created by conduct of various participants which may slow down or prevent the adoption of open banking. These include:

2.30.1 The terms of access to digital wallets (such as Apple Pay), meaning services may cost more than they need to, or are limited in other ways. This could limit the adoption of any solutions that seek to compete with Visa and Mastercard for instore payments such as viable alternatives to traditional Eftpos. This is an issue that is currently being considered by the UK Payment System Regulator.¹⁸

2.30.2 The terms imposed on merchants to accept new payment solutions. We are aware of some payment gateways that impose a 2 percent fee on merchants where an alternative payment solution is used. Such practices make potentially low-cost options high cost.

2.30.3 Merchant willingness to continue to accept sub-optimal payment methods because they are accepted by all banks. Some banks are lagging in the delivery of open banking, so many merchants are reluctant to accept more secure open banking payment methods that cannot be used with all banks. For example, the only online banking payment method used by the NZ Transport Agency uses screen scraping because other online banking payment methods are not accepted by all the five largest banks.¹⁹

Submissions on the barriers to open banking

2.31 There was general agreement that more focus should be placed on further aspects of some of the minimum requirements. These included a greater focus on the consumer and merchant adoption aspects, such as the importance of trust.

Submissions on the minimum requirements

2.32 The five largest banks and Payments NZ discussed the importance of safety and security of the network to support a thriving API enabled payment ecosystem.

2.32.1 Westpac noted:

¹⁸ UK Payment Systems Regulator "Call for Information - Big tech and digital wallets" (July 2024). Available at: <https://www.psr.org.uk/publications/consultations/cp249-big-tech-and-digital-wallets-call-for-information/>.

¹⁹ Commerce Commission "Day 2 - Personal banking services Market Study conference Session 5 - open banking (continued)" (May 2024). Available at: https://comcom.govt.nz/_data/assets/pdf_file/0029/353738/Personal-banking-conference-transcript-Session-5-Open-banking-continued-14-May-2024.pdf.

...the Commission has not elaborated on how it intends to address [the] risks [relating to fraudulent transactions] through a Designation. Given that any increased risk is likely to erode the Minimum Requirements of confidence and participation that the Commission has identified, we believe that careful consideration of these risks must be taken into account when assessing the net benefits that a proposed Designation will deliver and whether it will in fact deliver the stated objectives of a proposed Designation.²⁰

2.32.2 ASB considered:

Safety and security must be paramount[.] To ensure we maintain consumer trust and confidence and continue to protect Kiwis from the threat of fraud, scams and cyber-crime. New Zealand needs a safe (and trusted), easy, and efficient way for people to make payments and receive additional value and insight from their payments data.²¹

2.32.3 ANZ did not agree with our minimum requirements:

No. For example, there is no 'Risk' categorisation in Figure A1 and without this requirement being developed, or understood from an end-to-end perspective, the overall trust in the payment ecosystem will be undermined.²²

- 2.33 Kiwibank did not agree that access to 90% of consumers is necessary as a starting point for third party providers to develop a commercially viable API enabled product. Kiwibank's submission is addressed from paragraph 4.17.
- 2.34 ASB provided its proposed "prioritisation and sequencing of open banking delivery" which comments on different elements of current and future API standards.²³
- 2.35 Banzpay, and Akahu largely agreed with our characterisation of the minimum requirements and considered designation alone would not achieve them.²⁴ They considered regulatory intervention would be required.
- 2.36 Worldline considered the minimum requirements were not enough and the current APIs were insufficient:

²⁰ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 3, para 3.3.

²¹ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 1.

²² ANZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, Q13.

²³ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at Appendix 2.

²⁴ Banzpay "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 6, Q13; Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, Q13.

We need more. The minimum requirements should align to draft recommendation 3 of the market study into personal banking services. The features and functions of the APIs need to have more capability, instore needs to be provided for and the standards need to prepare for real-time payments so there a chance of integration and interoperability.²⁵

2.37 Similarly, Akahu noted:

Banks have sole discretion over which use cases are supported. This constrains competition and innovation because a bank is not incentivised to provide access to services which are seen as a threat to the bank.²⁶

2.38 A number of third parties have raised issues relating to potential barriers to consumers and merchants adopting these solutions. These include reasonable access to mobile wallets and fees that merchants are charged for using alternative payment gateways when choosing some e-commerce platforms such as Shopify.

2.39 Westpac submitted that the Commission should allow industry sufficient time to deliver against expectations before it makes any determination to recommend designation.²⁷

2.40 Payments NZ considered the Commission should not impose requirements regarding API standards or functionalities. It argued this would undermine its industry-wide demand analysis and create uncertainty.²⁸

Response to submissions on the minimum requirements

2.41 We agree with some of the points made by the five largest banks and Payments NZ. We agree that the security and safety of the network and wider payment ecosystem is essential for a thriving API enabled payment ecosystem. However, we consider our view of the minimum requirements recognises the importance of safety, security, and consumer trust. For example, we consider consumers and merchants demanding API enabled services and having the confidence and trust to use them relies heavily on the safety and security of the network.

2.42 We partially agree with Worldline's submission. We consider our view of the minimum requirements align to the draft market study recommendations. We note draft recommendation three includes a target date for open banking to be fully operational, we consider our view of the minimum requirements applies irrespective of any target date.

²⁵ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 15, Q13.

²⁶ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 1, Q3

²⁷ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 3, para 3.7.

²⁸ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 14.

- 2.43 We acknowledge the issues Worldline and Akahu raised regarding the functionality of APIs and the prioritisation of different use cases. We disagree with Payments NZ's argument that, following a designation, the Commission should not impose restrictions in relation to future API standards and functionalities. We have set expectations for how the API Centre operates and will continue to engage with the API Centre. Should these changes not result in an appropriate prioritisation of functionality that will unlock the greatest benefits for merchants and consumers in API standards development we could look to intervene. The Commission would consult with affected parties if, following a designation, we considered regulation may be required to address the functionality of APIs and the prioritisation of different use cases.
- 2.44 In response to Westpac, we consider industry has already had sufficient time to deliver a thriving API enabled ecosystem on its own. While we have seen progress from the banks against some of our expectations we echo the sentiment of fintechs who are concerned about banks' ability to deliver without a regulatory presence.²⁹
- 2.45 We agree with views that potential barriers to adoption should be considered as a part of the demand minimum requirement. We are consulting on how these barriers may be impacting consumers and merchants in the Visa and Mastercard networks as part of our 'Costs to businesses and consumers of card payments' consultation paper.³⁰ The Payment System Regulator in the UK is also looking into mobile wallets' role in unlocking the potential of open banking payments and how they could impact competition between payment networks.³¹

Submissions on adoption of open banking

- 2.46 The banks, Payments NZ, and the fintechs considered consumer and merchant trust in open banking would be essential to achieving a successful open banking ecosystem.

²⁹ Worldline, Banzpay, Akahu, and Revolut, see Banzpay "Submission on Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 1, Q1.

³⁰ Commerce Commission "Retail payment system – Costs to businesses and consumers of card payments in Aotearoa New Zealand: Consultation Paper" (23 July 2024). Available at: https://comcom.govt.nz/_data/assets/pdf_file/0031/359491/Retail-Payment-System-Costs-to-businesses-and-consumers-of-card-payments-in-Aotearoa-New-Zealand-Consultation-Paper-23-July-2024.pdf.

³¹ Financial Conduct Authority (UK) "PSR and FCA launch joint call for information on big tech and digital wallets" (July 2024). Available at: <https://www.fca.org.uk/news/press-releases/psr-fca-launch-joint-call-information-big-tech-digital-wallets>.

- 2.47 BNZ considered open banking success in the UK and Australia has been driven by building customer trust. BNZ submitted designation could disrupt the stability of the payment system and undermine customer trust.³²
- 2.48 Westpac considered the uptake of open banking in the UK and Australia was below the expectations of industry. It submitted a lack of incentive for customers to use open banking payments and/or customer concerns about the security of open banking payments could be responsible for lower than expected uptake in the UK.³³
- 2.49 ASB considered payments regulation should regulate activities rather than entities to include all participants. ASB noted:
- (...) global providers like Apple [are] taking over as a primary payments method overseas. In Australia, 47% (and growing) of all in-store card payments by CBA customers are made using mobile wallets, and of those in-store mobile wallet payments, over 80% occur via Apple Pay.³⁴
- 2.50 Payments NZ and BNZ argued a potential designation did not sufficiently address, or include, sub-optimal access methods. Payments NZ advocated for phasing out impersonated access methods which it considered undermine API enabled products and consumer safety.³⁵
- 2.51 Worldline noted fintechs using and paying for APIs are penalised versus those using sub-optimal methods which do not have a cost associated with them. Worldline argued "sub-optimal [access] methods should be prohibited".³⁶
- 2.52 Worldline and Akahu discussed how consumer's experience using open banking payment products impacts the level of adoption of products.³⁷

Response to submissions on adoption of open banking

- 2.53 We agree that consumer and merchant trust in open banking will be essential to a thriving open banking environment including widespread adoption of open banking payment products and services.

³² BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, para 4.2

³³ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4.

³⁴ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 3.

³⁵ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 11.

³⁶ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 15, Q16.

³⁷ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, Q3.

- 2.54 We disagree with BNZ that designation could disrupt the stability of the payment system and undermine consumer trust. Designation would not impose any immediate regulation or changes to the operation and function of the interbank payment network. Any subsequent regulation must be consulted on with participants. We consider designation will enable the Commission to address the problems regarding open banking adoption described above.
- 2.55 We partially agree with BNZ, Payments NZ, and Worldline's points about sub-optimal access methods. We agree that sub-optimal access methods somewhat undermine wider consumer safety, and fraud and scam prevention efforts. These methods also disadvantage those fintechs who use bank APIs with respect to those using sub-optimal access methods which do not have the same restrictions or costs associated. We consider we could look to address issues relating to sub-optimal access methods following a designation. We address whether sub-optimal access methods are included in the designation at paragraph 6.66.
- 2.56 We note Westpac's submission on the challenges facing open banking systems in the UK and Australia.
- 2.57 We note ASB's submission. Our reasons for the network definition and recommended designation order are discussed in Chapter 6.

The barriers to open banking payments will not be addressed by a Consumer Data Right alone

- 2.58 The barriers preventing open banking will not all be addressed by the implementation of the CDR regime alone due to some of the barriers being outside the scope of the CDR.
- 2.59 The CDR regime, which is likely to be in place sometime in 2025, is essential to the delivery of open banking as it will deliver the data sharing, account action (e.g. open and closing of accounts) and access accreditation required for third parties to access and use customer and product data. Under the CDR, individuals and businesses will have greater choice and control over their banking data.
- 2.60 But the CDR is not the complete solution to the delivery and adoption of open banking. Because the CDR regime is focused on consumer and product data, the potential scope of payments regulation under the CDR is limited. To realise the full benefits of open banking payments there will need to be intervention in addition to the implementation of the CDR regime.
- 2.61 With respect to payments, the CDR regime provides for potential rules around the initiation of payments, access by third parties to bank APIs and pricing for using those APIs. This means the CDR regime does not provide for:

- 2.61.1 other potential regulation of the conduct of participants, including some participant conduct, governance arrangements of the industry body, and payment system wide pricing; or
- 2.61.2 regulation of other parties, including parties operating mobile wallets and payment gateways.
- 2.62 Because many of these issues are payment system issues, the CDR will not be able to fully address them. The Commission, as the competition and payment system regulator, can address these issues through a designation and subsequent intervention where required.
- 2.63 The figure below illustrates how designation complements the CDR to deliver better payment outcomes.

Figure 2.1 Scope of CDR in covering the key elements of open banking

Key element	Non-payment account actions	Data	Payments including initiation, pricing and adoption
CDR	In scope of CPD Bill		Not covered by CDR
Recommended Designation	Not covered by designation		Covered by designation

Chapter 3 Designation is needed to achieve the full benefits of open banking

- 3.1 The previous chapter set out the opportunity presented by open banking, the barriers that are inhibiting the delivery and adoption of open banking and how the CDR regime, although essential to the delivery of open banking, is not the complete solution.

- 3.2 The purpose of this chapter is to explain why designation of the interbank payment network is needed to drive and enable the delivery of open banking and address barriers to adoption of open banking payments, in ways that complement and enhance the CDR. In this chapter we:
 - 3.2.1 outline why we are recommending designation;
 - 3.2.2 summarise and respond to the relevant points and issues from submissions; and
 - 3.2.3 discuss the updates we have made to our reasoning as a result of our consultation and industry's progress on implementing open banking.

- 3.3 In outlining why we are recommending designation, we discuss:
 - 3.3.1 our interest in the interbank payment network;
 - 3.3.2 why intervention through a designation is needed now;
 - 3.3.3 our approach to realising open banking payments; and
 - 3.3.4 the other benefits of a designation.

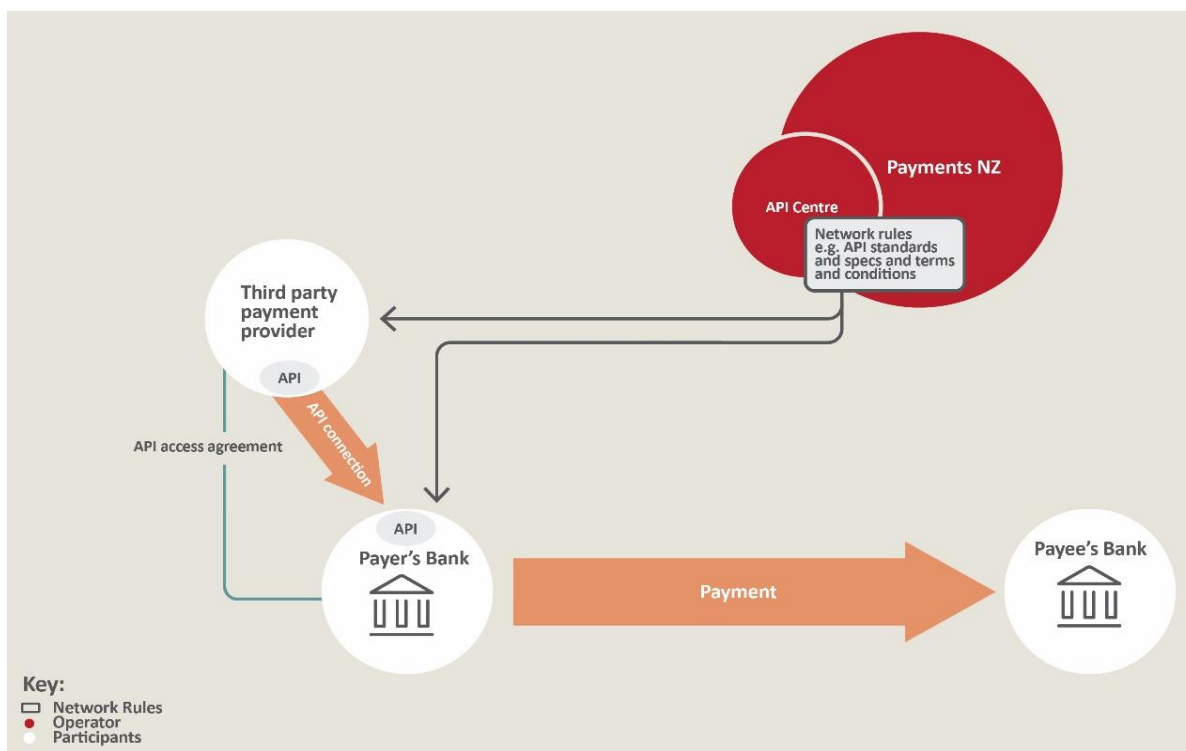
The interbank payment network is key to open banking payments

- 3.4 The interbank payment network is the largest retail payment network in the country and involves all bank transfers, direct debits, and automatic payments amongst other payment instruments.³⁸ These payments between bank accounts can be facilitated, either directly or indirectly, through a range of payment instruments. The value of payments between banks using the Bulk Electronic Clearing System (BECS), which is only part of the interbank payment network, was about \$1.75 trillion in 2023.³⁹ Unlocking innovative new payment methods to address unmet consumer and business demand on a network of this scale would deliver benefits of a significant order.
- 3.5 The interbank payment network is key to delivery and adoption of open banking payments. The open banking payment solutions being developed all operate or will operate on this network. This is because the interbank payment network is the network that enables the API enabled payment system that is required for open banking payment solutions.
- 3.6 Figure 3.1 below shows the key elements of the interbank payment network that relate to API enabled payments. These are our initial areas of interest in the interbank payment network.

³⁸ For additional context on the interbank payment network, see RBNZ “New Zealand’s Payment Landscape: A Primer” (9 November 2022). Available at: <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/publications/bulletins/2022/new-zealands-payment-landscape-a-primer.pdf>; see Payments NZ “Payment Methods”. Available at: <https://www.paymentsnz.co.nz/resources/payment-methods/>.

³⁹ Payments NZ “BECS Performance Dashboard” (December 2023). Note: data is 12-month rolling totals at December 2023. Note: \$1.75 trillion refers to interbank payments only and excludes intrabank payments.

Figure 3.1 Key elements of the interbank payment network that relate to API enabled payments



3.7 The full definition of the network is set out in Chapter 5.

Designation of the interbank payment network is needed now

3.8 The credible threat of regulatory intervention is required to reduce risk and accelerate our development of open banking which has lagged in New Zealand due to the absence of agile regulation. As explained above, the full benefits of open banking cannot be achieved through the CDR alone. Designation will enable the Commission to drive open banking through the most fundamental of retail payment networks.

3.9 The primary benefits of designation are:

- 3.9.1 designation complements and enhances the CDR;
- 3.9.2 designation speeds up the delivery and adoption of open banking; and
- 3.9.3 designation enables MBIE to focus on CDR delivery in other sectors.

- 3.10 Regulatory intervention to drive open banking is conventional. Open banking regimes around the world have all relied on regulatory intervention. The hugely successful API enabled payment ecosystems such as UPI in India and Pix in Brazil, have had very significant government direction. By contrast, we envisage an industry-led approach operating within properly regulated boundaries. Designation allows the Commission to shape those boundaries and gives us the tools we need to assist and intervene where appropriate to greater confidence in delivery.
- 3.11 A designation of the interbank payment network will provide the Commission with the use of its full regulatory powers to address:
- 3.11.1 gaps in the CDR regime that threaten the delivery of open banking;
 - 3.11.2 barriers to the adoption of open banking payments by merchants and consumers; and
 - 3.11.3 payment system wide efficiency and competition such that open banking payments can compete with the Visa and Mastercard networks and enable viable alternatives to traditional Eftpos.
- 3.12 Designation would incentivise participants to more quickly resolve issues as they arise and could even reduce the incentives for issues to occur in the first instance. We consider this could provide greater certainty for banks and third party payment providers, and importantly their investors, to continue to move forward with development of the API enabled payments ecosystem.⁴⁰
- 3.12.1 Further delays risk destroying the fintech industry before it is fully operational, and increasing the risk premia on investments in the New Zealand payment system both for fintechs and for banks. If major banks continue to treat open banking as a 'nice to have' then future investments will be harder to achieve.
 - 3.12.2 We note Worldline's submission, which stated it cannot continue to invest if it is reliant on a "one bank at a time" approach (see paragraph 4.39.1).⁴¹

⁴⁰ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), para 14.

⁴¹ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, para 16.

- 3.13 Designation is not regulation and industry efforts are essential to the delivery of open banking payments. However, with designation, if industry does not deliver a thriving API enabled payments ecosystem in a timely way, the time required for us to take regulatory action would be shortened. We would be able to intervene immediately after consulting on that intervention.

Submissions on the need for a designation

Submissions on the benefits of designation

- 3.14 Submitters' views varied on the benefits of designation. The five largest banks, and Visa considered designation was not necessary,⁴² and some submitted the potential costs of regulation following a designation outweighed any potential benefits.⁴³ Although we note, Payments NZ, ASB, and BNZ suggested there may be benefit following a designation if the Commission used its powers to:
- 3.14.1 mandate industry agreed deadlines (BNZ);⁴⁴
 - 3.14.2 prioritise scam and fraud prevention (ASB);⁴⁵ or
 - 3.14.3 implement a well-designed, outcomes focused, regulatory backstop (Payments NZ).⁴⁶
- 3.15 Fintechs (Worldline, Banzpay, Akahu, and Revolut) considered the benefits of designation were clear and submitted designation alone would not be enough to achieve a thriving API enabled payment ecosystem.⁴⁷
- 3.16 Westpac submitted the Commission must weigh the benefits of designation against the costs of future regulation and not against the costs of designation alone.⁴⁸

⁴² ANZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, para 2.1.

⁴³ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, para 2.3.

⁴⁴ BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4, para 2.5.

⁴⁵ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 1.

⁴⁶ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5.

⁴⁷ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 1, Q1.

⁴⁸ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 3, para 3.8.

Submissions on the use of regulatory powers

3.17 Payments NZ and the five largest banks considered developing an industry roadmap would better achieve the Commission's goals. Payments NZ and BNZ considered designation without a roadmap would increase uncertainty.⁴⁹

3.18 BNZ and ANZ argued it was unclear how a designation would be used and expressed concerns about the Commission intervening. BNZ wrote:

It is unclear how the Commission might use its regulatory powers following the designation. The potential scope of regulation referenced by the Commission (and the draft proposed designation) is broad. For example, would these powers be used to create an accreditation framework for participants? We submit that this is a crucial foundation for a successful Open Banking regime, along with consumer control over their data, and clarity that liability passes with the data.⁵⁰

3.19 ANZ wrote:

While ANZ understands the intent behind this work, it is unclear on what problem the Commission is trying to resolve. For example, there is no clear reasoning to suggest there is failure with the Network. Likewise, there is no clear argument suggesting that designation will bring greater benefits, such as lowering costs or improving the effectiveness and efficiency of the Network.⁵¹

3.20 BNZ noted potential security concerns if the Commission were to use its powers to intervene to set universal payment limits, they wrote:

The risk of the proposed designation potentially disrupting the stability of the payment system by eliminating critical protections should be carefully considered. (The Commission has expressed a desire as part of designation to standardise payment limits, removing individual bank controls. It considers that limits should be set at such a level as not to limit transactions such as large payroll.) ...This could heighten security risks within the payment system, undermining the essential trust users place in open banking—a trust that is fundamental for consumer and merchant adoption.⁵²

3.21 We have also heard from a number of banks and payment service providers that there are conversations that are not happening due to concerns with the Commerce Act. Some consider these to be real concerns while others consider these to be perceived. However, all agreed that there is a need for these conversations to occur in order to drive forward open banking.

⁴⁹ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 14.

⁵⁰ BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 3, para 2.2.1.

⁵¹ ANZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, para 2.1.2.

⁵² BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, para 4.2.

Response to submissions on the need for a designation

Benefits of designation

- 3.22 We remain satisfied that there are significant benefits of designation.
- 3.23 When considering the costs and benefits of designation we can only include those costs and benefits directly associated with designation. At this stage, any regulation following a designation is unknown and it would be inappropriate to consider hypothetical benefits or costs of unknown regulations. However, our position remains:
- 3.23.1 we expect to take an engagement-first approach where we can help to facilitate industry solutions and allow industry to deliver an API enabled payments ecosystem;
 - 3.23.2 we would only consider regulation under the designation if it better met the purpose of the Act than the status quo; and
 - 3.23.3 we would consult on any proposed regulation under the designation.

The use of regulatory powers

- 3.24 We acknowledge submitters' concerns regarding regulatory uncertainty. We note, if industry delivers a thriving open banking payment system in a timely manner there will be no need for further regulatory intervention and less uncertainty. We also note the current uncertainty for fintechs and their investors, which designation could alleviate. We have sought to identify the types of issues we might look to address and the types of interventions we might consider following a designation (see Table 3.1).
- 3.25 We disagree with Payments NZ and BNZ that designation without a roadmap may increase uncertainty. We consider the development and implementation of a roadmap may be supported by a designation as there would be a credible threat of regulatory intervention if industry did not deliver.
- 3.26 We recognise there may be additional costs if the use of regulatory powers is required. Any compliance costs or risk of unintended consequences of regulation would be considered as part of any future decision making process if we considered the use of regulatory powers may be necessary. Consistent with good regulatory practice, we would seek to use our regulatory powers no more than we consider desirable or necessary to meet the statutory purpose.
- 3.27 We recognise the ability for the Commission to play a role in facilitating conversations as the retail payment system regulator and the competition regulator. This type of intervention has been considered in how we may approach issues.

Designation complements and enhances the CDR

- 3.28 The full benefits of open banking cannot be achieved by the CDR alone. The success of open banking will be determined by the delivery and adoption of open banking payments. Designation will enable us to address the issues described in Chapter 2. We anticipate the Commission and MBIE will enter into a Memorandum of Understanding to agree our respective roles.
- 3.29 The interbank payment network is key to the delivery of open banking. It the largest retail payment network in New Zealand and is the network in which fraud and scams that involve a bank transfer take place.
- 3.30 Without designation of the interbank payment network and the attendant ability for the Commission to influence that network, the long-term success of open banking in New Zealand may well be reduced. That is because, as set out in Chapter 2, the full benefits of open banking cannot be achieved by the CDR alone.
- 3.31 That is not to diminish the role of the CDR in open banking. The CDR is essential to the delivery of open banking as it will deliver the data sharing, account action (e.g. open and closing of accounts) and access accreditation required for third parties to access and use customer and product data. However, payments are also a key element of open banking, and the success of open banking will be determined by the delivery and adoption of open banking payments. This is why Australia is currently considering adding payments initiation to its CDR regime.
- 3.32 We will continue to assist MBIE in developing the CDR by sharing feedback and intelligence gathered in our work. We anticipate that the Commission and MBIE will enter into a Memorandum of Understanding to agree our respective roles to avoid regulatory overlap.

Submissions on interaction with a CDR

- 3.33 Payments NZ, the five largest banks, and Visa were concerned about regulatory duplication.⁵³ Payments NZ and the five largest banks expressed a strong preference for a CDR regime to be the sole basis of open banking regulation. BNZ wrote:⁵⁴

As an alternative to the proposed designation of the interbank payment network, BNZ considers Open Banking would be ideally progressed via the introduction of a Consumer Data Right regime, that we understand is being progressed by MBIE at present.

⁵³ Payments NZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024) at page 12.

⁵⁴ BNZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024) at page 4, para 3.2.

- 3.34 Payments NZ considered designation and any subsequent regulation should yield, explicitly, to other regulatory or legislative requirements and act as a bridge to a CDR regime only, and then step back. Payments NZ wrote:⁵⁵

11. We recommend that any designation should explicitly state that it yields to any overlapping FMI designation or CPD legislation.

12. We recommend that any designation and resulting exercise of powers should act as a bridge to CPD only, and then step back.

- 3.35 Banzpay agreed designation should be complementary to an eventual CDR regime and noted if regulatory intersections were not well managed this would result in a complex regulatory environment favouring larger market incumbents.

- 3.36 ASB questioned whether the Commission was the appropriate regulator. It wrote:⁵⁶

In determining whether designation is necessary, we urge the Commission to consider the purpose of that potential designation and its intended beneficiary. If the intent is to regulate to increase competition and create greater opportunities for fintechs and others to enter the market and expand, then the Commerce Commission is the natural regulator. However, if the intent is ultimately to provide New Zealanders with more options, enable switching between banks, support customers to more easily access their banking data, and enable cheaper, faster and safer payments, then it is appropriate for the Financial Markets Authority (FMA) to regulate (as the financial services sector conduct regulator).

- 3.37 ASB also "consider[ed] that any recommendation to designate (...) should take into account the Minister's intent to return to a 'twin peaks' model".⁵⁷

Response to submissions on the interaction with the CDR

- 3.38 We note Payments NZ and the five largest bank's submissions. As above, designation of the interbank payment network will enable the Commission, as the competition and payment system regulator, to address the barriers inhibiting the delivery and adoption of open banking payments in ways that complement and enhance the CDR.
- 3.39 We disagree with Payment's NZ's suggestion that any designation and subsequent regulation should yield to any overlapping CDR legislation or subsequent designation. As above, we anticipate that the Commission and MBIE will enter into a Memorandum of Understanding to agree our respective roles to avoid regulatory overlap.

⁵⁵ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 12.

⁵⁶ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4.

⁵⁷ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2.

- 3.40 We note Banzpay's submission.
- 3.41 How designation would promote competition and efficiency in the retail payment system is addressed in Chapter 4. In response to ASB, we note this includes increasing competition and creating greater opportunities for fintechs and others to enter the market, expand, and provide cheaper, faster and safer payments. These are all elements critical to the efficiency of the retail payment system.
- 3.42 We acknowledge ASB's view on the Minister's intent to return to a twin peaks model. We note the Commission is regulator of the retail payment system under the Act and the FMA does not have any role in the regulation of payments, the competition and efficiency mandate, or regulatory tools we have to address the barriers we have identified in the interbank payment network.

Designation speeds up the delivery and adoption of open banking

- 3.43 Open banking is lagging in New Zealand. Fintechs are ready to go, and if open banking is not delivered soon, there is a real risk that those fintechs may fail or move to other markets. Designation will enable us to speed up and improve industry efforts to deliver open banking.
- 3.44 Time is of the essence. While we are currently in a period of momentum, we have observed this in the past, only for momentum to stall. For example, previous governments have set expectations for bank progress, however despite industry talking about API development and implementation for several years, progress has been slow.⁵⁸
- 3.45 Fintechs are ready to go. We have been told that as many as 12 fintechs have gone into hibernation or redirected their focus away from open banking in the last 12 months due, at least in part, to the delays in open banking delivery. We are also concerned that any further delay will undermine fintech investment in New Zealand.
- 3.46 Designation will enable us to speed up and improve the industry efforts to deliver open banking such that, in the short term, there is timely:
- 3.46.1 Delivery of the prerequisites of open banking, such as APIs and partnering between third parties and banks on reasonable terms.

⁵⁸ The Minister of Commerce and Consumer Affairs sent this open letter to API providers in 2019 expressing his concerns on the current pace and scope of progress of API development. See Hon Kris Faafoi, Minister of Commerce and Consumer Affairs "Open letter to API Providers regarding industry progress on API enabled data sharing and open banking" (December 2019). Available at: <https://www.mbie.govt.nz/assets/open-letter-to-api-providers-regarding-industry-progress-on-api-enabled-data-sharing-and-open-banking.pdf>.

- 3.46.2 Delivery of a viable replacement to traditional Eftpos. Eftpos is in decline. A much larger proportion of retail payments are now going through the international card schemes, and the cost of maintaining the Eftpos network is increasing relative to the diminishing volume of transactions.
- 3.46.3 Adoption of open banking payment solutions (including an Eftpos alternative) by consumers and merchants that are functional, low cost, safe and convenient.
- 3.47 Worldline is the most affected party by the decline of Eftpos. Worldline is supportive of the Commission's recommendation to designate and wants an open banking environment delivered as quickly as possible. Worldline noted:
- New Zealand's local proprietary debit product Eftpos will soon be gone and with it goes an important competitive constraint on international card schemes (Schemes). [...] While Eftpos declines there is nothing to take its place.⁵⁹
- To ensure consumers can use domestic payments easily, and that a competitive constraint on the Schemes remains, we need to replace Eftpos with a more modern product before it is completely gone.⁶⁰
- 3.48 Designation of the interbank payment network now is also complementary to the future delivery of the data sharing and access accreditation aspects of the CDR:
- 3.48.1 if designation is granted now, the CDR regime will trail designation by about 15 months. Designation enables the Commission to lay the foundation for the CDR by addressing current industry shortcomings, including with the API Centre and bank delivery, such that the Minister and MBIE can speed up the delivery of the CDR by confidently incorporating industry standards and practices that will have been developed under the supervision of the Commission; and
- 3.48.2 when the CDR is introduced, the Commission's payments work will be well under way and MBIE can focus on the data sharing, account action and accreditation aspects of open banking, knowing that the payments regulator is dealing with the payments aspect.

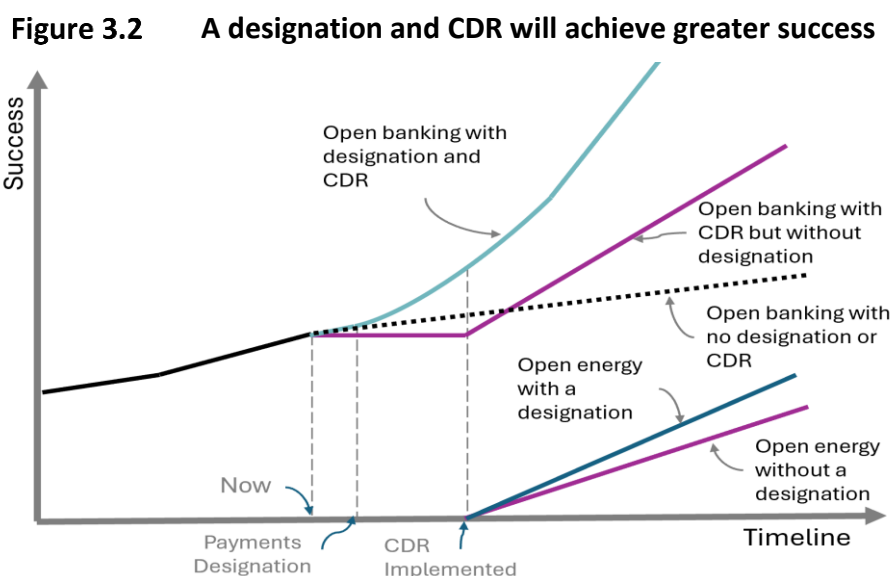
Designation enables MBIE to focus on CDR delivery in other sectors

- 3.49 Designation will enable MBIE to move onto CDR implementation in other important sectors of the economy rather than spend its time and resources on regulating payments, which is within the Commission's remit.

⁵⁹ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, para 5.

⁶⁰ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 6, para 21.

- 3.50 Ongoing regulation of the open banking payments system will be resource intensive. The Commission is currently resourced to regulate this sector, MBIE is not. Designation reduces the need for ongoing intervention by MBIE.
- 3.51 Designation, and our subsequent focus on the delivery and adoption of open banking payment solutions on the interbank payment network, will therefore enable MBIE to move onto CDR implementation in other important sectors of the economy more quickly. This co-operative regulatory model may well be a template to reduce regulatory duplication where the CDR is introduced in other sectors where there is also a sector regulator.
- 3.52 The figure below illustrates the differences in the speed and success of open banking and economy-wide CDR delivery and adoption under different scenarios. We have included this figure to demonstrate, in a simple way, the additional benefits of designation.



Designation provides us with access to our full range of interventions

- 3.53 **Table 3.1** outlines potential actions we expect to consider to promote competition and efficiency and the development of a thriving API enabled payment ecosystem.

Table 3.1 Potential regulatory interventions

	Intervention	Description and output
1	Monitoring and publication <i>Designation not required</i>	Monitoring and publication of information to raise awareness and influence industry behaviour. For example, monitoring industry progress and publishing the Request for Views Paper and the submissions has raised awareness of our role and stakeholder's views of the issues and contributed to industry dialogue and action.
2	Setting expectations <i>Designation not required</i>	Setting expectations to drive industry behaviour in a targeted manner. For example, our open letter is setting expectations for industry or participant conduct to support overcoming some of the barriers preventing a more competitive and efficient retail payment system.
3	Facilitate industry solutions <i>Designation may be required</i>	Facilitate industry conversations to ensure optimal outcomes. For example, holding or facilitating conversations where industry is not holding a conversation due to perceived concerns about the Commerce Act. ⁶¹ Or, requiring the API Centre to set rules.
4	Require compliance with industry solutions <i>Designation required</i>	Require participants to comply with the rules and agreements developed by industry. For example, we could make delivery of the API Centre Minimum Open Banking Implementation plan a legal requirement for API Centre members, which would have financial implications for non-compliance.
5	Set or amend industry solutions and require compliance <i>Designation required</i>	Amend industry rules and agreements or set regulations to impose additional requirements on industry. For example, we could set regulation that the API Centre Minimum Open Banking Implementation plan needs to be modified with different API version or delivery date milestones. Or set pricing principles in relation to API access or other fees impacting open banking.

3.54 We expect the monitoring costs from designating now to be equivalent to the alternatives of designating at some point in the future or not designating at all. In our open letter we set out several expectations against which we will be monitoring industry progress. Even without a designation, we have a role to monitor the progress of open banking due to the benefit it will bring to merchants and consumers. We therefore consider that monitoring costs are likely to be the same with a designation.

⁶¹ The Commission would be able to set network standards and rules (including standards and rules that enable collaboration) and, under s 52 of the Act, the restrictive trade provisions of the Commerce Act do not apply in respect of compliance with any of those standards or rules.

- 3.55 We have been setting expectations to date, but with a designation we consider these to be more effective and met in a timelier way. This is due to the stronger possibility of regulation if they are not met.

Designation allows us to continue to perform an active regulatory role

3.56 Following a designation the Commission would continue to perform an active industry regulatory role. We expect to take an engagement-first approach where we can harness industry expertise. However, we anticipate we may have to use our full range of interventions and regulatory tools to remove barriers as they appear.

- 3.57 Following a designation the Commission would continue to perform an active industry regulatory role. The purpose of this role would be to ensure the potential competition and efficiency benefits from open banking are realised for the long-term benefit of consumers and merchants. Our role would also be to ensure industry work fits within the forthcoming CDR regime. To achieve this, we would:

3.57.1 use the full range of interventions and regulatory tools at our disposal;

3.57.2 utilise industry expertise and the valuable work done to date where appropriate;

3.57.3 focus on the most significant competition and efficiency issues in the payments system (e.g. one of our immediate focuses is to enable a viable alternative to traditional Eftpos); and

3.57.4 collaborate with MBIE to ensure the co-regulatory regime is fit for purpose and the potential benefits from open banking are realised.

- 3.58 We would seek to address the issues preventing open banking from being fully realised, as we described in Chapter 2 and above, we understand these issues as:

3.58.1 shortcomings in the delivery of open banking; and

3.58.2 barriers to the adoption of open banking payments by merchants and consumers.

- 3.59 We expect to take an engagement-first approach where we can help to facilitate industry solutions and allow industry to deliver an API enabled payments ecosystem.

Designation enables the Commission to oversee industry and deliver open banking

- 3.60 Industry input is essential to the successful delivery of open banking. Initial progress by banks in delivering open banking was sluggish. We have focused on encouraging industry action, in the last year we have seen increased momentum, which we attribute largely to the perceived threat of greater regulatory intervention, including that a designation may be pending.
- 3.61 But there is still a long way to go. Designation allows us to continue to encourage those industry efforts, leveraging off the progress already made, while using our regulatory tools to assist or direct where appropriate, including by:
- 3.61.1 influencing governance arrangements and the transparency of decision making within Payments NZ Ltd and the API Centre and, if desirable, requiring change to those arrangements should that be necessary;
 - 3.61.2 speeding up fintech partnering with banks on reasonable terms. There is an apparent lack of willingness by some banks to partner with third parties on reasonable terms;
 - 3.61.3 facilitating coordinated industry solutions. Coordinated conduct authorised by the Commission under a designation is exempt from liability under the Commerce Act. As the retail payment system and competition regulator, we will be able to facilitate discussions necessary to implement open banking without participants worrying about whether those discussions breach the law;
 - 3.61.4 facilitating efforts to fight frauds and scams. Most scams occur on the interbank payment network and many consumers use sub-optimal payment methods (including screen scraping) that require them to provide their bank user names and passwords to third parties. Designation accelerates the move to safer, more efficient payment methods and provides the Commission with the tools to support industry initiatives to fight fraud and scams; and
 - 3.61.5 regulating, through network standards and rules where needed.
- 3.62 We anticipate we may have to use our full range of interventions and regulatory tools to address shortcomings to the roles performed by industry.

Connection between industry's roles and MBIE's through the CDR

- 3.63 Industry, the Commission, and MBIE will have different roles to fully realise the benefits of open banking. We will work with industry and MBIE to ensure the roles are split such that the abilities of industry are leveraged while the shortcomings are addressed. We will work to ensure that any transition of roles are orderly and do not reduce momentum.
- 3.64 In time we expect MBIE to perform accreditation through the CDR. This will reduce duplication of accreditation of third parties. However, the accreditation settings should be informed by industry (both banks and third parties) to ensure that there is a coordinated transition from any existing arrangements.

Other benefits of a designation

- 3.65 Designation would provide further benefits beyond those directly relating to open banking payments described above. Designation would enable the Commission to support bank efforts to decrease the risk of fraud and scams and unlock further benefits for merchants and consumers through work to upgrade the underlying payment infrastructure.

Designation could support other improvements to interbank payment network

- 3.66 Designation would ensure that initiatives such as next generation payments have sufficient regulatory oversight for industry to deliver beneficial outcomes more quickly than we have seen with the development and roll out of the API enabled payment system.
- 3.67 There are many missing features and functionality of the interbank payment network. Open banking payments is just one. Others include confirmation of payee, centralised fraud and scam monitoring, more payment data and new payment types, such as request to pay. All these and others are upgrades to the network infrastructure which, if implemented are likely to reduce or eliminate certain types of fraud and scams (although not all).

Next generation payments

- 3.68 Payments NZ is currently preparing an investment case for next generation payment infrastructure that would deliver these missing features and functionality. It is possible that the features of the interbank payment network, and the types of conduct of the participants of the network we have detailed in this paper inhibit the speed of improving the network infrastructure. If that does occur a designation could be useful for us to support the delivery of beneficial outcomes sooner.

Fraud and scams

- 3.69 As above, designation accelerates the move to safer, more efficient payment methods and provides the Commission with the tools to support industry initiatives to fight fraud and scams.

Submissions on other benefits of a designation*Next generation payments*

- 3.70 Banzpay noted the Commission should consider how next generation payments infrastructure could change the scope of a designation.⁶² Worldline considered "the APIs being built and used for online payments today should be able to easily integrate to those future systems".⁶³
- 3.71 ASB and BNZ discussed real-time fraud detection and mitigation.⁶⁴

Fraud and scams

- 3.72 ASB considered "safety must be the first priority".⁶⁵ It noted:⁶⁶

Designation of the interbank payments network could be useful to support a "thriving API enabled ecosystem" if the Commission were to reprioritise the delivery roadmap from v2.3 features to focus on real-time fraud mitigations first, in light of rapidly growing and evolving fraud and scams in New Zealand.

- 3.73 BNZ noted the Commission "assumes that any standards or rules made under a designation (...) could be made at pace". BNZ considered this may not be the case.⁶⁷
- 3.74 Visa argued interbank payments offer limited fraud protection and recommended the Commission "address the challenges that fraud and scams may present in light of any potential changes".

⁶² Banzpay "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, Q9.

⁶³ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 9, para 33.

⁶⁴ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at pages 1 & 4; BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, para 4.2.

⁶⁵ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 6.

⁶⁶ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 1.

⁶⁷ BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 3.5.

Response to submissions on other benefits of designation*Next generation payments*

- 3.75 We consider designation will support the effective and efficient delivery of next generation payments through greater oversight, and where required, appropriate regulatory intervention.

Fraud and scams

- 3.76 We mostly agree with ASB's points. We agree that the delivery of APIs should be dynamic and iterative. However, we consider it is important that Payments NZ and API providers provide indicative timelines for when certain functionalities will be developed to provide greater certainty for third parties.
- 3.77 The sequencing and prioritisation of different functionalities within the APIs is something we could consider following a designation. Following a designation, we would expect to consider the prioritisation of functionalities in relation to fraud and scams.
- 3.78 We acknowledge BNZ's points. As we discuss above, we consider designation will bring forward the benefits of open banking to consumers and merchants. We are aware of the timelines required for any regulations following a designation. We note Table 3.1 illustrates the types of actions we expect to consider if the interbank payment network is designated.
- 3.79 We note Visa's points. As above, we consider API enabled payments are more secure than current alternatives.

Chapter 4 The mandatory considerations for making this recommendation

Purpose and structure of this chapter

- 4.1 Under the Act, the Commission is required to take account of several factors (which we call the mandatory considerations) before making a recommendation to designate a retail payment network. In this chapter we:
 - 4.1.1 outline our approach to the mandatory considerations; and
 - 4.1.2 summarise and respond to the relevant points and issues from submissions.
- 4.2 The mandatory considerations are:
 - 4.2.1 whether designation will achieve the purposes of the Act;
 - 4.2.2 the features of the interbank payment network;
 - 4.2.3 the conduct of participants in the interbank payment network;
 - 4.2.4 the nature of the interbank payment network;
 - 4.2.5 the interaction with the FMI Act; and
 - 4.2.6 other relevant regulatory requirements.

Designation will achieve the competition and efficiency purposes of the Act

- 4.3 As set out above, a recommendation to designate is consistent with the purpose of the Act and our functions and powers under the Act. Designation will promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand, including by supporting the timely delivery of open banking through a thriving API enabled payment ecosystem.

Submissions on the competition and efficiency purposes of the Act

- 4.4 There is general acceptance as to the potential benefits of open banking, although some submitters queried whether designation was the appropriate mechanism to achieve those benefits. In particular, banks were concerned that designation and any subsequent regulation could result in regulatory duplication with an eventual CDR regime. They submitted regulatory duplication would not be consistent with the competition and efficiency purposes of the Act.⁶⁸

Response to submissions on the competition and efficiency purposes of the Act

- 4.5 We have addressed the banks specific concerns about regulatory duplication with a CDR regime above starting at paragraph 3.33.

Features of the network

- 4.6 To support innovation the interbank payment network requires continued co-ordinated efforts by the banks that have a significant majority of consumers and merchants. Not all banks have the same incentives for innovation which can result in reduced incentives for other banks. This feature of the network limits or is likely to limit competition and efficiency in the retail payment system.

Banks' incentives to create and support a thriving open banking payment system are mixed

- 4.7 The incentives on banks for the timely delivery of open banking payments appear weak. In our view, several assumptions may be at play for some banks, including that:
- 4.7.1 greater competition from new innovative API enabled payment options may erode existing revenue streams from card schemes;
 - 4.7.2 there is a first mover disadvantage in the investment of API development given the uncertainty in other banks' private cost-benefit assessments of investing and delivery timeframes;
 - 4.7.3 there is limited expected profit in investing in the API enabled ecosystem, irrespective of other banks' commitment, with underpinning assumptions including:
 - 4.7.3.1 demand in New Zealand for innovative new API enabled payment options is limited or highly uncertain;

⁶⁸ BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 1, para 1.4.

- 4.7.3.2 merchants are indifferent between secure and insecure payment methods for their customers, and that demand is already significantly satisfied by innovative bank transfer options that use sub-optimal access methods to the interbank payment network (eg POLi Pay and third party payment options enabled by the intermediary Akahu);
- 4.7.3.3 the expected costs associated with liability for fraudulent transactions in API enabled payment options will exceed the revenue potential;
- 4.7.3.4 the cost of connecting APIs to their legacy core systems which are built on old technology, meaning any changes to them are very costly;
- 4.7.3.5 terms in respect of access arrangements may be regulated at a level that does not allow a return on investment; and
- 4.7.4 third party providers are banks' potential rivals in the provision of innovative API enabled payment options and/or services to consumers and businesses.

Industry-only delivery carries further risks

- 4.8 We continue to be concerned about the risks arising from an industry-only delivery approach:
 - 4.8.1 banks may construct barriers to access which reduce competition;
 - 4.8.2 further delays may lose investor confidence;
 - 4.8.3 ongoing transparency issues; and
 - 4.8.4 limited incentives for reasonable fees.

- 4.9 Several of the minimum requirements that we consider are not met relate to issues with transparency (particularly in respect of submissions received relating to exemptions, decision making and bank influence) and reasonable fees in the API ecosystem.⁶⁹ We also set some additional expectations in relation to transparency of the API Centre and Banks.⁷⁰ For example, the API requirement includes API non-functional aspects, such as transparent reporting.⁷¹
- 4.10 The partnering requirements relate to ensuring third party payment providers can enter into agreements for the use of APIs. These requirements include:
- 4.10.1 processes for banks and third party payment providers reaching access agreements for API use is standardised across banks and is transparent, reasonable, takes an appropriate amount of time;⁷² and
- 4.10.2 pricing such that the price charged by banks for API calls creates incentives for both banks and third party payment providers to enter into agreements for the use of APIs. The price for access and use of banks' APIs should enable banks to recover costs, and provide incentives for both parties to develop, iterate and use APIs.⁷³

Submissions on features of the network

- 4.11 Payments NZ, ANZ, and Westpac disagreed with our views on the features of the network. They considered the current incentives on banks to deliver are sufficient. Payments NZ submitted that many of the issues the Commission had outlined were historical and had since been addressed. Payments NZ noted:

(...)the API Centre now has powers to set minimum requirements (including implementation dates) that API Providers must meet to ensure that a standardised API is technically and operationally ready for use with Third Parties(...)

(...)the API Centre collates implementation progress reports from API Providers which are published publicly and updated regularly;

(...)we have taken the proactive step of seeking the Commission's authorisation to co-design an accreditation and partnering framework..(.)

⁶⁹ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A.

⁷⁰ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex B, table B1.

⁷¹ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A, para A2.

⁷² Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A, para A12.

⁷³ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A, para A13.

Other concerns covered in the Commission's papers are already on the work plan, such as availability and performance, and the standards development roadmap.⁷⁴

4.12 Payments NZ disagreed with our view that exemptions could hinder the timely delivery of an API enabled payment ecosystem. Payments NZ submitted the exemption criteria were a high threshold to clear and that it was premature to comment on the possible impacts of exemptions.

4.13 Payments NZ commented on the governance of the API Centre and API Council:

There is a strong theme that the API Council's progress and performance is hindered because it is operating under delegated authority from the Payments NZ board where directors are appointed by shareholders. It is important to note that there are three independent directors on the board (including an independent Chair) and all directors have obligations under the Payments NZ constitution and the Companies Act 1993 to act in the best interest of the Company (even if those interests conflict with the interests of their appointing shareholder). Similarly, API Council members, which includes three independent members and an even balance of API Providers (i.e. banks) and Third Parties, must also act in the best interests of the API Centre. We are not aware of any instance where our governance structure has been responsible for adversely shaping a particular outcome for open banking.⁷⁵

4.14 Worldline, Banzpay, and Revolut considered the governance arrangements of the API Centre were hindering progress on open banking.

4.14.1 Worldline considered industry forums were not a level playing field as the banks have more influence on decisions.⁷⁶

4.14.2 Banzpay wrote:

[T]he ability of the API Centre to deliver on the promise of open banking has been significantly constrained by its funding and governance arrangements, its ability to ensure API Providers fully support the delivery of the required standards, and a lack of a strong regulatory backstop.⁷⁷

4.14.3 Revolut wrote:

⁷⁴ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 17.

⁷⁵ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 18.

⁷⁶ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 11, para 38.

⁷⁷ Banzpay "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, Q10.

We strongly support enablement of API system via designation... Based off international success cases, we strongly support an independent organisation, designating the open banking standards and APIs... We support [the UK] approach of government mandation[sic] to ensure correct management of liability, quality and having an independent entity for implementation & governance.⁷⁸

- 4.15 We also note Akahu's points regarding first mover disadvantage.⁷⁹
- 4.16 Kiwibank was concerned the Commission was seeking to achieve predetermined outcomes. It was also concerned that following a designation, the Commission may use its powers to bring forward Kiwibank's API delivery timeline under the API Centre's Implementation Plan. It argued this would be at odds with international best practice and that there were good reasons for a staged approach to open banking and the development of APIs. Kiwibank also noted the Consultation Paper referred to Kiwibank lagging and did not acknowledge the rationale for a staged approach.⁸⁰
- 4.17 Kiwibank strongly disagreed with the Commission's position that access to 90% of consumers is necessary as a starting point for third party providers to develop a commercially viable API enabled product. Kiwibank considered there was insufficient evidence to support the Commission's position and noted if a product "is not successful with access to over 80% of consumers, it is more likely to be a reflection of customer demand for the [product]".⁸¹
- 4.18 Worldline noted:
- Kiwibank's extended deadline has been cited to us as a reason for merchants (including government departments) to continue to use screen scraping products.⁸²

Response to submissions on features of the network

- 4.19 We remain concerned about the issues we have outlined above and in our consultation. We consider the features of the interbank payment network mean the minimum requirements are unlikely to be met in a timely manner without designation.

⁷⁸ Revolut "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, Q14.

⁷⁹ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, Q16.

⁸⁰ Kiwibank "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2.

⁸¹ Kiwibank "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 3, para 10.

⁸² Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 14.

- 4.20 We are pleased to see how Payments NZ is responding to our expectations we have set them.⁸³ However, Payments NZ can only do so much, and the banks play a significant role in delivering. Third parties also have a role to play in the industry process to ensure that their API needs are known and designed for.
- 4.21 We consider issues related to the transparency and governance of the API Centre and Council, including competing views regarding the sequencing of different functionality being added to the API standards causing delay, or the power imbalance between participants, to be something we could look to address post a designation. We are aware of different governance arrangements in other jurisdictions which have sought to address these issues.
- 4.22 We consider governance arrangements need to improve. We consider the conditions in the draft authorisation addresses some, but not all, governance issues we have identified.⁸⁴ We do not have a particular view on the necessary or ideal governance arrangements of the API Centre or API Council regarding the development of an API enabled payment ecosystem, but believe that improvement is required. The Commission would consult with affected parties if, following a designation, we considered regulation may be required to address any issues relating to the governance arrangements of the API Centre or API Council.
- 4.23 We partially agree with Kiwibank's position regarding a staged delivery. As noted above we consider there are good reasons for a staged approach to open banking and API development. However, the length of the staging is significant, and we note Worldline's submission above which states "Kiwibank's extended deadline has been cited to us as a reason for merchants (including government departments) to continue to use screen scraping products".⁸⁵
- 4.24 We are interested in the timeline for different banks to develop APIs. We are aware of the missed benefits for consumers with an extended staged delivery, as well as the good reasons for a staged delivery. Our interest is ensuring the benefits of open banking are realised for consumers and merchants in a timely manner. We would consult with the affected parties before implementing any necessary regulations.

⁸³ Payments NZ "Payments NZ's letter in response to Commerce Commission's open letter 22 February 2024" (27 June 2024).

⁸⁴ Commerce Commission "Payments NZ Limited - Draft Determination" (1 July 2024). Available at: https://comcom.govt.nz/_data/assets/pdf_file/0019/357031/Payments-NZ-Limited-Draft-Determination-1-July-2024.pdf.

⁸⁵ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 14.

Conduct of participants in the interbank payment network

- 4.25 Conduct of the participants of the network reduces or is likely to reduce competition and efficiency of the retail payment system.
- 4.26 Industry has made progress on delivering open banking, but there is conduct of participants in the interbank payment network which we consider means that the minimum requirements are unlikely to be met in a timely manner without a credible threat of regulation.

Ongoing collective action by the banks is required to meet the minimum requirements and foster a thriving API enabled payment ecosystem

- 4.27 A thriving API enabled payment ecosystem requires the banks to collectively deliver APIs and work with third parties to implement the ecosystem. The banks must continually work collectively on implementing standardised API. Innovation in any payment network controlled by the existing participants carries the risk of moving at the pace of the slowest member. Participants' commercial interests may not always align and collective action and achieving consensus may be hindered by any one of the five largest banks.
- 4.28 A single large bank de-prioritising or refusing to meet the delivery timelines, and/or refusing to develop all the API functionality that they agreed in the industry's Minimum Open Banking Implementation plan, may undermine the viability of the whole API enabled payment ecosystem.^{86 87}
- 4.29 To date, industry, through the API Centre at Payments NZ, has developed API standards and an implementation plan for delivering APIs to the agreed standards. The banks have then been responsible for each deploying their APIs.
- 4.30 It is important to note that the Minimum Implementation Plan is currently only for one version of the standards. Future implementation plans for evolving functional and non-functional aspects of the APIs will require continued collaboration.⁸⁸ Therefore, there will be a future delivery timeline which these arguments may also apply to.

⁸⁶ Payments NZ API Centre "Minimum Open Banking Implementation Plan" (May 2023). Available at: <https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-banking-implementation-plan/>.

⁸⁷ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024) at para 13.

⁸⁸ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A.

- 4.31 For third party payment providers to develop a sustainable viable commercial proposition, they will need open API access at all banks, enabling wide appeal to consumers. If some banks decide not to build open APIs, the success of the payment providers are at risk.⁸⁹
- 4.32 We consider that API access at ANZ, ASB, BNZ, Kiwibank and Westpac would allow third party payment providers to potentially gain access to enough consumers to support commercially viable API enabled payment products. These banks collectively represent over 90% of all consumers' bank accounts in New Zealand.
- 4.32.1 While all these banks have signed up to the Minimum Implementation Plan, Kiwibank's delivery of APIs is staged and it has committed to delivering their first version of the APIs in 2026.⁹⁰ While there are good reasons for a staged delivery, and this follows other international examples, the length of staged delivery is significant. This represents a risk for third party payment providers and missed benefits for their customers.
- 4.33 We note that BNZ had already built v2.1 of the payment initiation standard when the Minimum Implementation Plan was set in May 2023 and had already begun partnering with fintechs for its use.
- 4.34 The API Centre governance model allows API providers or banks, the ability to request an exemption from adherence to the open banking implementation plan and minimum delivery requirements.⁹¹ A declined exemption requires a remediation plan and failure to implement results in the bank being in breach of the API Centre terms and conditions. It is unclear what incentive being in breach provides to banks complying with the open banking implementation plan if they do not want to implement an aspect of it. We understand banks face no financial penalty or enforcement action if in breach. We see this as an additional factor potentially hindering timely delivery of an API enabled payments ecosystem.

⁸⁹ A UK bank's research has identified that certain products based on open banking will only be successful if the product reaches a certain scale and critical mass. The research also identifies that coordination in the open banking ecosystem must be improved to create a commercially viable market. See Oxera "The (unmet) potential of Open Banking" (4 July 2023). Available at: https://openapi.ulsterbank.co.uk/bankofapis/v1.0/dynamic-content/content/assets/communityarticles/Open_Banking_Report_Final.pdf.

⁹⁰ Payments NZ API Centre "Minimum Open Banking Implementation Plan" (30 May 2023). Available at: <https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-banking-implementation-plan/>

⁹¹ See Payments NZ API Centre "Exemptions". Available at: <https://www.apicentre.paymentsnz.co.nz/standards/implementation/exemptions/>

How banks have approached partnering agreements with third party service providers

- 4.35 Banks have sole discretion over which third parties they partner with via access agreements. We are concerned with how some banks have approached the partnering process to date, including displaying a lack of transparency with the sector, placing undue restrictions on third parties, and imposing significant delays within partnering processes. We note there have been better and worse performers across the sector:
- 4.35.1 BNZ has numerous access arrangements in place with different fintechs to use their APIs and have provided information detailing their partnering process.⁹² This is markedly different from other banks. However, we have seen ASB and Westpac begin to partner with third parties, but not yet in the same number as BNZ.
- 4.35.2 ANZ provided access to Worldline in 2022 and since then no new fintechs are using its APIs.⁹³ This is despite ANZ having some version of the APIs operationally ready over this time. This is concerning and suggests that its partnering terms are markedly different to the other banks. As ANZ is the largest bank, its progress on access arrangements has the greatest impact on the development of the API enabled payments ecosystem.
- 4.36 We note, since publishing our open letter of expectations earlier this year, we have observed an improved willingness from some banks towards partnering with fintechs. We will continue to look to set expectations as a first step where we consider some clarity would be beneficial and we consider they are likely to be met without further intervention being required.

Submissions on conduct of participants

- 4.37 Payments NZ considered the Commission's concerns were historical and no longer relevant. Payments NZ noted:

to address issues in relation to partnering between API Providers and Third Parties, we have taken the proactive step of seeking the Commission's authorisation to co-design an accreditation and partnering framework. In our application to the Commission for authorisation, we emphasised the benefits such a framework would provide for competition, ongoing innovation, and good outcomes for consumers and businesses.⁹⁴

⁹² API Centre - Payments NZ "Find a provider or third party". Available at:

<https://www.apicentre.paymentsnz.co.nz/join/api-standards-user/current-standards-users/>.

⁹³ API Centre - Payments NZ "Find a provider or third party". Available at:

<https://www.apicentre.paymentsnz.co.nz/join/api-standards-user/current-standards-users/>.

⁹⁴ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 17.

4.38 Worldline, Akahu, and Banzpay agreed with our concerns about partnering. Akahu argued designation and regulation was needed to address the philosophical and power differences between the banks as API providers and third party service providers.⁹⁵

4.39 Worldline, Banzpay, and Akahu discussed that progress towards an API enabled payment ecosystem is only as fast as the slowest bank.

4.39.1 Worldline noted:

Worldline cannot continue to invest in the future of debit (whether online or instore) if we are reliant on a “one bank at a time” approach, particularly when each bank takes years to engage, commit, and the finally deliver.⁹⁶

4.40 Banzpay agreed with our characterisation of industry progress to date and noted:

Our first preference was for industry to deliver a more competitive, innovative, and efficient retail payment system without regulatory intervention. However, given the lacklustre level of progress achieved to date, designation is a sensible step to ensure timely progress.⁹⁷

Response to submissions on conduct of participants

4.41 We remain concerned the conduct of participants in the interbank network mean the minimum requirements are unlikely to be met in a timely manner without designation.

4.42 While an accreditation and partnering framework will provide some benefits, including simplifying partnering processes, we remain concerned by the lack of progress we continue to observe from some of the banks.

Nature of the interbank payment network

4.43 The interbank payment network is the largest retail payment network in New Zealand and involves all bank transfers, direct debits, and automatic payments amongst other payment instruments. The API enabled payments ecosystem being developed currently uses the direct credit payment instrument.

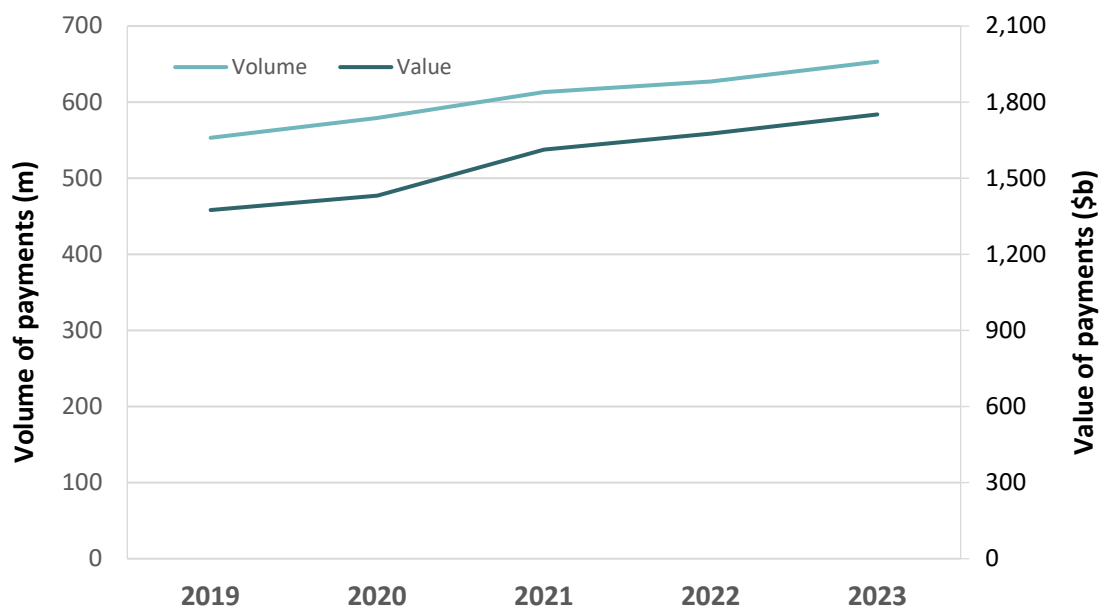
⁹⁵ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, Q4.

⁹⁶ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, para 16.

⁹⁷ Banzpay "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, Q1.

4.44 The scale of the interbank payment network is significant. To give a sense of the size of the interbank payment network, the value of payments between different banks using BECS, which is only part of the network, was \$1.75 trillion in 2023, with 653.8 million transactions.⁹⁸ We note this excludes intrabank payments between two customers at the same bank.⁹⁹ Figure 4.1 below shows the value and volume of all BECS interbank payments, which has been increasing.

Figure 4.1 Volume and value of payments between different banks (BECS) (2019 - 2023)¹⁰⁰



4.45 We expect the interbank payment network to continue to be widely used for retail payments in the future. This is due to the reliance on bank transfers for a wide range of common payments, such as wages, invoices, dividends, ongoing mortgage and rent payments, rates, insurance, telephone, and power bills.¹⁰¹

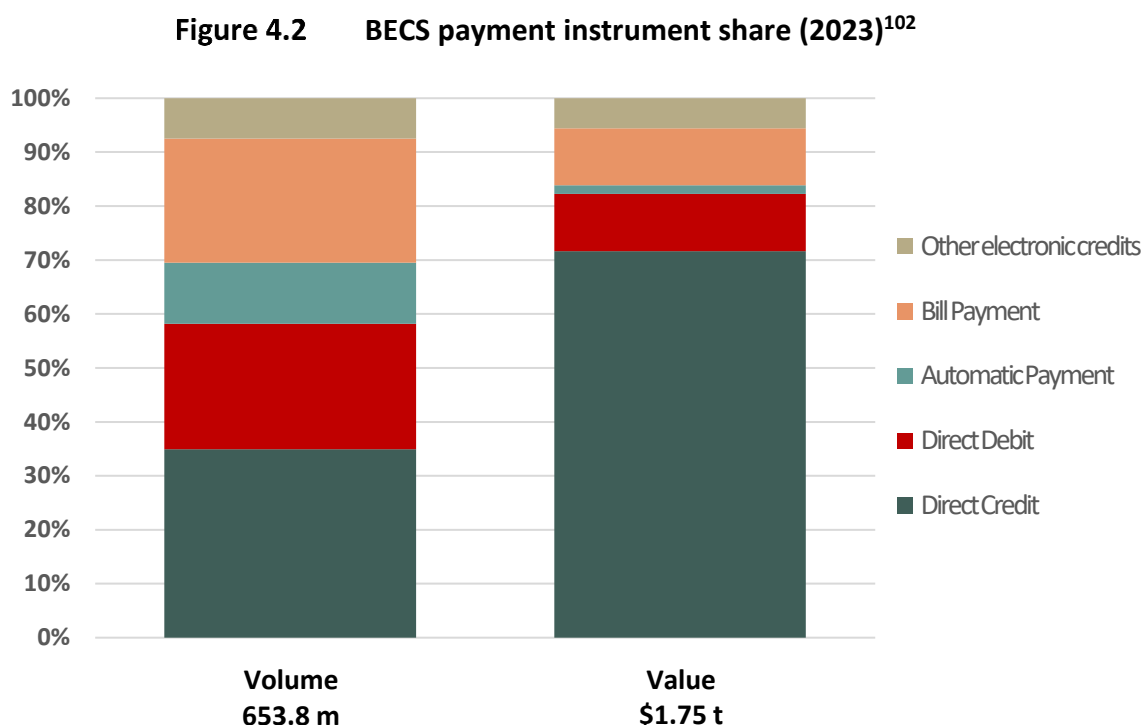
⁹⁸ 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data refers to interbank payments only and excludes intrabank payments. It also includes all BECS payments, including retail and non-retail.

⁹⁹ 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023).

¹⁰⁰ BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data refers to interbank payments only and excludes intrabank payments. It includes all BECS payments, including retail and non-retail.

¹⁰¹ We previously discussed this in our Request for Views Paper (31 July 2013). Available at: 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

- 4.46 Figure 4.2 below illustrates the current split between BECS payment instruments supported by this network, by volume and value of transactions between different banks.



There are significant potential benefits due to the size of the network

- 4.47 In considering the extent of these unrealised benefits of open banking payment solutions in New Zealand, we are taking into account the nature of the network, including the number, value, and nature of the transactions that the network currently processes or is likely to process in the future.
- 4.48 As discussed above, we expect the interbank payment network to continue to be widely used for payments in the future. Unlocking innovative new payment methods to address unmet consumer and business demand on a network of this scale would deliver benefits of a significant order.

Submissions on nature of the interbank payment network

Submissions on the potential benefit due to the scale of the network

- 4.49 While the five largest banks and Payments NZ noted their support for open banking and discussed the potential benefits a thriving API enabled payment ecosystem may provide, we note:

¹⁰² 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data, including NZ\$1.75 trillion, refers to interbank payments only and excludes intrabank payments. It includes all BECS payments, including retail and non-retail. Note that data is 12-month rolling totals at December 2023.

4.49.1 Kiwibank questioned the magnitude of potential benefit;¹⁰³ and

4.49.2 ANZ considered New Zealand "already has an open, competitive, innovative, and efficient [interbank payment network]".¹⁰⁴

4.50 Westpac, ANZ, and Payments NZ noted the Commission's description of the nature of the interbank payment network included non-retail payments on the interbank payment network.¹⁰⁵ Westpac noted this in relation to the Commission's assessment of significant potential benefit due to the scale of the interbank payment network. Westpac further wrote:¹⁰⁶

We would encourage the Commission to consider whether its characterisation of the scale and nature of the network is consistent with the spirit and purpose of the RPSA which is concerned with competition and efficiency in the retail payment system. Importantly, we question whether benefits to ancillary markets and networks should be taken into account in determining whether a Designation is necessary, without consideration of whether the costs associated with Designation and potential regulation should be borne by interbank payment network in order to deliver benefits outside of this network.

4.51 Worldline, Banzpay, and Akahu largely agreed with our characterisation of potential benefits. Banzpay considered there may be further potential benefits as "the full suite of use cases [are] yet to be explored".¹⁰⁷

Submissions on scale of unmet demand

4.52 ANZ, Westpac, and Kiwibank did not support the Commission's view that there is significant unmet demand for innovative payment methods.

4.52.1 Westpac questioned the scale of the potential unmet demand and "cautioned against" the Commission viewing demand from certain segments of the economy as being an indicator of broader unmet demand. Westpac noted "the slow uptake of open banking in Australia and the United Kingdom [in this regard]".¹⁰⁸

¹⁰³ Kiwibank "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 14.

¹⁰⁴ ANZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 1.4.

¹⁰⁵ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 3.10.

¹⁰⁶ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 3.11.

¹⁰⁷ Banzpay "Submission on Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, Q11.

¹⁰⁸ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4 paras 3.12 & 3.13.

4.52.2 Kiwibank argued the scale of unmet demand is not as significant as the Commission suggested and does not justify designation. Kiwibank considered there was insufficient evidence to suggest significant unmet demand and that unmet demand could not be inferred from the uptake of sub-optimal methods.¹⁰⁹

4.53 Worldline noted intrabank payments were not included in our characterisation of the nature of the network.¹¹⁰

4.54 Worldline, Akahu, Banzpay, and Retail NZ supported the Commission's view that there is significant unmet demand.

4.54.1 Banzpay noted:

“unless there was ample unmet demand it is unlikely Payments NZ would have sought an authorisation...to further develop its framework for open banking...”¹¹¹

4.55 Retail NZ supported the Commission recommending designation of the interbank payment network. Retail NZ also described opportunities for retailers:

Retailers see there are opportunities to offer value to customers through seamless payment experiences.

Bank transfers are typically one of the lowest cost payment options and one of the fastest at settling, with funds typically available within several hours. However, on a practical level they are prohibitively difficult for retailers to use, particularly in-person at the point of sale. This is because the information required is complex and time consuming to collect, requiring customers to input bank account and reference details. In addition, there is no simple or verifiable way for a retailer to make sure a payment has been accepted.

We are excited about the benefits that simplified in person bank transfer could bring for retailers including faster settling times, lower costs for accepting payments and reducing the time it takes to reconcile payments made by bank transfers.¹¹²

Response to submissions on nature of the interbank payment network

4.56 We remain satisfied that the scale of the interbank payment network, and the scale of retail payments on the network, means the potential benefits from increased competition and efficiency on the network are significant. We discuss why we have defined the network this way in Chapter 6.

¹⁰⁹ Kiwibank "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 4, para 17.

¹¹⁰ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 13, Q5.

¹¹¹ Banzpay "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 5, Q12.

¹¹² Retail NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 2, Q4.

- 4.57 As we noted in our Consultation Paper, we only presented the value and volume of BECS transactions on the interbank payment network which does not include the intrabank payments.¹¹³ There is limited transparency of the overall value and volume of all payments on the network. We encourage Payments NZ to be more publicly transparent with aggregate information they hold on this and other networks.
- 4.58 We remain satisfied there is significant unmet demand for innovative payment methods and significant potential benefit to be realised from a thriving API enabled payment ecosystem. While we recognise different services will appeal to certain segments of consumers more than others, we consider the full benefits are not yet present and this is evidenced by the significant unmet demand and uptake of sub-optimal methods.

Interactions with the FMI Act

- 4.59 We consider a designation and any subsequent regulation would be complementary to the powers and duties the RBNZ has under the FMI Act. We consider that any designation should not yield to other regulatory or legislative requirements.
- 4.60 A requirement of the Act is that we consult with the RBNZ if the network comprises any part of a system that is a designated FMI within the meaning of the FMI Act. The Act defines network infrastructure as being infrastructure that is necessary for the provision of the network's payment services.¹¹⁴ This means that any retail payment network that involves payments between different banks is likely to use the financial market infrastructure required to clear and settle payments between two different banks ie, SBI and the Exchange Settlement Account System (**ESAS**).
- 4.61 We have consulted with the RBNZ, which generally supports our efforts to strengthen the API enabled payment ecosystem and agrees that ESAS and SBI are relevant infrastructures for the retail payment system.¹¹⁵ RBNZ considered that, given the potential for duplication or conflicting regulatory overlaps between its responsibilities and the retail payments regime, continued and close communication between the Commission and RBNZ was required.

¹¹³ For example, see Commerce Commission, "Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (27 March 2024), pages 30 to 33, footnotes 56 to 58 and 60 to 61. Available at: https://comcom.govt.nz/__data/assets/pdf_file/0022/348070/Retail-Payment-System-Consultation-on-our-proposal-to-recommend-designation-of-the-interbank-payment-network-27-March-2024.pdf

¹¹⁴ Retail Payment System Act, s7.

¹¹⁵ See Commerce Commission "Consultation letter to Reserve Bank of New Zealand on the proposal to recommend designation of the interbank payment network" (21 March 2024); see RBNZ "Response to

- 4.62 We agree and see the recommended designation as being complementary to the powers and duties the RBNZ has under the FMI Act and we continue to engage with the RBNZ on the scope of our payments work generally. We will consult with the RBNZ specifically if any subsequent regulation is developed in relation to ESAS or any system designated as an FMI.

Submissions on interaction with the FMI Act

- 4.63 Payments NZ, the five largest banks, and Visa were concerned about regulatory duplication.¹¹⁶ Payments NZ considered designation and any subsequent regulation should yield, explicitly, to other regulatory or legislative requirements:¹¹⁷

Other overlapping payments regulation should prevail over the Commission's designation of retail payments

11. We recommend that any designation should explicitly state that it yields to any overlapping FMI designation or CPD legislation.

- 4.64 Similarly, Westpac advocated for a Memorandum of Understanding (MoU) between the Commission and RBNZ regarding the banks obligations under the FMI Act and any designation:¹¹⁸

If the Designation proceeds, we would submit that at a minimum the Commission and RBNZ enter into a Memorandum of Understanding outlining their respective roles and responsibilities in a similar form to the MoU between the FMA and RBNZ entered into in respect of the FMI Act in 2021.

Response to submission on interaction with the FMI Act

- 4.65 After consulting with the RBNZ, we disagree with Payments NZ's suggestion that any designation and subsequent regulation should yield to any overlapping FMI designation or legislation. As above, we consider a designation and any subsequent regulation would be complementary to the powers and duties the RBNZ has under the FMI Act. We consider that any designation should not yield to other regulatory or legislative requirements.
- 4.66 In response to Westpac's suggestion, we consider an MoU is unnecessary at this time, although we expect to continue to engage with the Reserve Bank to ensure that our respective work is well aligned.¹¹⁹

consultation letter on Commerce Commission's proposal to recommend designation of the interbank payment network" (9 April 2024).

¹¹⁶ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 12.

¹¹⁷ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024) at page 12.

¹¹⁸ Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), paras 4.6 to 4.8.

¹¹⁹ There is already an MoU in place between the RBNZ and the Commission for other matters.

Other relevant regulatory requirements

- 4.67 Other regulatory requirements raised by submitters will not, on their own, overcome the barriers we have identified to a thriving API enabled payments ecosystem. Including the CDR, which will address some but not all of the barriers to the delivery and adoption of open banking.
- 4.68 Other regulatory considerations raised by submitters are not material to our recommendation to designate. Some may be relevant to the details and content of any subsequent regulation. If so, we will consider the relevance and effect of those regulatory considerations at that time.
- 4.69 We have also considered the impact of three other current (and future) regulatory requirements:
- 4.69.1 the initial designations under the Act of the Visa and Mastercard payment networks;
 - 4.69.2 the CPD Bill; and
 - 4.69.3 the Commission's Payments NZ Authorisation.

The initial designations under the Act cannot address the barriers we have identified

- 4.70 When the Act came into force, it included an initial pricing standard for the four initial designated retail payment networks: Mastercard credit, Mastercard debit, Visa credit, and Visa debit.¹²⁰
- 4.71 There is some overlap in the participants of the initial designated retail payment networks and the participants of the interbank payment network. The banks are issuers and/or acquirers in the Mastercard and Visa debit and credit retail payment networks.
- 4.72 We do not consider that these initial designations for the Mastercard and Visa debit and credit networks could be used to overcome the barriers we have identified to a thriving API enabled payments ecosystem.

¹²⁰ Schedule 1, Subpart 2 of the Act.

- 4.73 It could be possible to change the incentives on banks as participants of the interbank payment network by regulating the fees in the Visa and Mastercard debit networks, but aspects such as partnering, or the timeliness of delivery would be more difficult to influence. We consider that the most appropriate way to address the barriers we have identified in the interbank payment network, which are preventing the development of a thriving API enabled payments ecosystem, is through this recommended designation.

Interactions with the Customer and Product Data Bill (CPD Bill) / Consumer Data Right regime (CDR Regime)

- 4.74 As described in Chapters 2 and 3, the CDR regime being developed by Government through the CPD Bill will support the delivery of open banking. The CDR will also address some, but not all, of the barriers to the delivery and adoption of open banking.
- 4.75 Designation of the interbank payment network will enable the Commission, as the expert competition and payment system regulator, to address the barriers inhibiting the delivery and adoption of open banking payments in ways that complement and enhance the CDR.
- 4.76 We will work with industry and MBIE to ensure the roles are split such that industry expertise is leveraged while the shortcomings are addressed. We will work to ensure that any transition of roles is orderly and does not reduce momentum.
- 4.77 In time we expect MBIE to perform accreditation through the CDR. This will reduce duplication of accreditation of third parties. However, the accreditation settings should be informed by industry (both banks and third parties) to ensure that there is a coordinated transition from any existing arrangements.
- 4.78 We consider that an MoU between the Commission and MBIE may be a useful mechanism to clarify the coordination of roles.

Interaction with the Commerce Act

- 4.79 On 16 January 2024, the Commission received an application from Payments NZ seeking authorisation under the Commerce Act to further develop its framework for open banking (the Authorisation Application). The Authorisation Application is for the joint development of:¹²¹

¹²¹ Commerce Commission "Payments NZ Limited - Statement of Preliminary Issues" (12 February 2024), para 10, available at: https://comcom.govt.nz/_data/assets/pdf_file/0025/343285/Payments-NZ-Limited-Statement-of-Preliminary-Issues-12-February-2024.pdf; Payments NZ Limited "Authorisation Application" (16 January 2024), para 8. Available at: https://comcom.govt.nz/_data/assets/pdf_file/0026/340586/Payments-NZ-Limited-Authorisation-application-16-January-2024.pdf.

- 4.79.1 an accreditation scheme (including accreditation criteria) for third parties; and
- 4.79.2 default standard terms and conditions on which banks would contract with third parties who meet the accreditation criteria.
- 4.80 We note that Payments NZ is not seeking authorisation for the specific accreditation criteria or the standard terms and conditions themselves, only for the negotiation process and giving effect to its outcome.¹²² We also recognise that the application states that Payments NZ is seeking authorisation for the proposed arrangement to:
- [A]ddress the inefficiencies of the bilateral partnering model and facilitate the development of open banking in Aotearoa New Zealand (...)¹²³
- 4.81 However, while we consider lawful collaboration is a key component of a thriving API enabled payment ecosystem, we do not consider that an authorisation to collaborate will result in all the minimum requirements being met or address our reasons for recommending designation.
- 4.82 We note the draft determination on Payments NZ's Authorisation Application grants authorisation for participants to collaborate for 18 months to implement a partnering framework between the banks as API providers and third party service providers.
- 4.83 We consider that the Commerce Act and our functions under it will not, on their own, result in a thriving API enabled payment ecosystem. While authorised collaborative conduct may be helpful in getting there, we do not consider industry has been forthcoming with other applications and the current one does not seek to address all the partnering minimum requirements.

Submissions on other relevant regulatory considerations

- 4.84 Submissions in relation to the CDR have been addressed in Chapter 3. We also received submissions noting the following regulatory considerations:¹²⁴
- 4.84.1 Anti-Money Laundering and Countering Financing of Terrorism Act 2009;

¹²² Commerce Commission "Statement of Preliminary Issues" (12 February 2024), para 12.

¹²³ Payments NZ Limited, Authorisation Application (16 January 2024).

¹²⁴ For example, on "AML regulation" see Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), para 4.9; on ESAS access review see Banzpay "Submission on Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 2.

- 4.84.2 Council of Financial Regulators vision for the future of New Zealand's payments;
 - 4.84.3 Conduct of Financial Institutions Act 2022;
 - 4.84.4 Digital Identity Services Trust Framework Act 2023;
 - 4.84.5 Privacy Act 2020;
 - 4.84.6 The Commission's Market study into personal banking services;
 - 4.84.7 The Reserve Bank's ESAS access review; and
 - 4.84.8 The Reserve Bank's Future of Money Programme.
- 4.85 Submitters noted these considerations, and submitted the Commission should take them into account in considering a potential designation.

Response to submissions on other relevant regulatory requirements

- 4.86 We have considered each of the statutory considerations submitters noted above. These considerations are not material to our recommendation to designate. Some may be relevant to the content or scope of any subsequent regulation. If so, we will consider the relevance and effect of those regulatory considerations at that time.

Chapter 5 The network and our recommended designation order

Purpose and structure of this chapter

- 5.1 This chapter sets out our:
- 5.1.1 definition of the interbank payment network; and
 - 5.1.2 recommended designation order for the interbank payment network.
- 5.2 We discuss our reasons for this network definition and this recommended designation order in Chapter 6.
- 5.3 Although the scope of designation has not changed from our earlier consultation documents, the consultation feedback we received from stakeholders has been helpful. That feedback has helped us to refine our thinking, particularly in ensuring the clarity of the definition of the network and the content of the recommended designation order.

How we have defined the interbank payment network

- 5.4 The Act defines “retail payment network” to mean the participants, arrangements, contracts, and rules that facilitate a class of retail payment.
- 5.5 Open banking payments use the "interbank payment network". The interbank payment network is the retail payment network that bank transfers are initiated on, by the consumer or merchant, by sending payment instructions to the consumer's bank.¹²⁵ Bank transfers can be facilitated, either directly or indirectly, through a range of payment instruments.¹²⁶ Some examples include:
- 5.5.1 fixed recurring payments facilitated by automatic payments;
 - 5.5.2 one-off payments facilitated by direct credits;¹²⁷
 - 5.5.3 one-off payments facilitated by bill payments; and

¹²⁵ The interbank payment network is used for both retail and non-retail payments. We discuss this further in Chapter 6.

¹²⁶ Additional context on the interbank payment network at RBNZ “New Zealand’s Payment Landscape: A Primer” (9 November 2022). Available at: <https://www.rbnz.govt.nz/-/media/project/sites/rbnz/files/publications/bulletins/2022/new-zealands-payment-landscape-a-primer.pdf>; and Payments NZ “Payment Methods”. Available at: <https://www.paymentsnz.co.nz/resources/payment-methods/>

¹²⁷ We note that direct credits are one off payment instruments but that enduring payment consent (v2.3 of the API standards) allows for repeat payments facilitated by direct credits. In this case, the consumer's experience is repeat payments.

- 5.5.4 one-off or recurring payments initiated by the payee facilitated by direct debits.
- 5.6 Banks transfers also include retail payments that are intrabank payments, for example when bank transfers are made between two accounts at the same bank.
- 5.7 After considering submissions, we define the interbank payment network as a retail payment network including the following key parts:
 - 5.7.1 Payments NZ or its successor is an operator of the interbank payment network;
 - 5.7.2 the class of retail payment that is retail payments facilitated by all bank payment instruments between Registered Banks or within a Registered Bank, initiated by either a consumer or a merchant as payee and where payment instructions are sent directly to the payer's bank, including payment instruments, such as direct credits and direct debits, irrespective of:
 - 5.7.2.1 the method of initiation;
 - 5.7.2.2 whether a consumer is either directly initiating a payment or indirectly initiating a payment through a third party; and
 - 5.7.2.3 the access method the third party has used to initiate that payment (for example, this includes standardised API and consented impersonated access, among other things);
 - 5.7.3 network rules that set out (among other things) how the network is be constituted, how activities on the network are to be carried out, and the rights and obligations under the network of its operator and participants; these network rules include the rules (as updated from time to time) described as:
 - 5.7.3.1 the BECS rules that relate to payment instruments, in relation to retail payments;
 - 5.7.3.2 the Payments NZ rules that relate to network participants of BECS, in relation to retail payments;
 - 5.7.3.3 the Payments NZ rules that relate to network participants of the API Centre, in relation to retail payments;
 - 5.7.3.4 the API Centre rules in relation to retail payments, including API standards and non-functional guidelines, frameworks, terms and conditions and policies;

- 5.7.3.5 the rules relating to network infrastructure operated by other participants that are necessary for the provision of the network's payment services including: Settlement Before Interchange (SBI) and Exchange Settlement Account System (ESAS); and
- 5.7.4 the participant classes include:
 - 5.7.4.1 registered banks in NZ;
 - 5.7.4.2 third party payment providers regardless of their access method where, from time to time, banks may act as third parties;
 - 5.7.4.3 infrastructure service providers that provide services to networks including the interbank payment network, such as RBNZ as operator of ESAS and Payments NZ as operator of SBI.
- 5.8 The interbank payment network currently uses Settlement Before Interchange (SBI) for the clearing of the retail payments between different banks. It is possible that some of the payment instruments may use a new clearing system in the future if the next generation payment system, as proposed by Payments NZ, is in operation.¹²⁸

Our Consultation Paper definition of the interbank payment network

- 5.9 In our Consultation Paper we gave our proposed definition for the interbank payment network.¹²⁹ We have refined this to clarify what is included in the network definition of the interbank payment network. These changes include incorporating the term "class of retail payment" and describing some of the network rules that are included (among others).

The content of a designation order

- 5.10 A designation order must specify both a network and at least one person that is an operator of the network.¹³⁰ In addition, a designation order may specify one or more of:¹³¹
 - 5.10.1 the payment products in the designated network;

¹²⁸ Payments NZ "Next generation payments" (accessed July 2024). Available at: <https://www.paymentsnz.co.nz/our-work/next-generation-payments/#:~:text=A%20cornerstone%20of%20many%20modernisation,and%20cross%2Dborder%20payment%20corridors>

¹²⁹ Commerce Commission, "Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (27 March 2024), para 4.2.

¹³⁰ Retail Payment System Act, s 14(1).

¹³¹ Retail Payment System Act, s 14(2).

- 5.10.2 documents that set out some or all the network rules; or
 - 5.10.3 classes of participants.
- 5.11 Our recommended designation order complies with these requirements because it:
- 5.11.1 specifies the interbank payment network as the retail payment network, as set out at paragraph 1;
 - 5.11.2 specifies Payments NZ as an operator of the network, as set out at paragraph 1(a);
 - 5.11.3 describes documents that set out some of the network rules in the interbank payment network, as set out at paragraph 1(b);
 - 5.11.4 specifies a non-exhaustive list of the payment products in the interbank payment network, as set out at paragraph 1(c); and
 - 5.11.5 specifies some of the classes of participants in the interbank payment network, as set out a paragraph 1(d).

Recommended designation order for the interbank payment network

- 5.12 In recommending the designation of the interbank payment network, we provide below the contents of a recommended designation order that could be used to designate the network.
- 5.13 We note that the following statutory definitions apply in this recommended designation order:¹³²
- 5.13.1 network participants and participants mean "participants" as defined under the Act (see paragraph 6.60);
 - 5.13.2 network rules and rules mean "network rules" as defined under the Act (see paragraph 6.52).
- 5.14 We also note that payment instruments include all BECS governed payment instruments including automatic payments, direct credits, bill payments, and direct debits.¹³³

¹³² Retail Payment System Act, s 7.

¹³³ Payments NZ "Bulk Electronic Clearing System", <https://www.paymentsnz.co.nz/our-work/our-payment-systems/bulk-electronic-clearing-system/>

- 1) The retail payment network known as the interbank payment network of which—
 - a) the person known as Payments NZ Limited, or successor to that company, is a network operator;
 - b) the network rules include (without limitation) the rules (as updated from time to time) described as:
 - i) the BECS rules that relate to payment instruments, in relation to retail payments;
 - ii) the Payments NZ rules that relate to network participants of BECS, in relation to retail payments;
 - iii) the Payments NZ rules that relate to network participants of the API Centre, in relation to retail payments;
 - iv) the API Centre rules in relation to retail payments, including API standards and non-functional guidelines, frameworks, terms and conditions and policies;
 - c) the payment products include all BECS governed payment instruments, in relation to retail payments;
 - d) the participant classes include (without limitation):
 - i) Registered banks in NZ; and
 - ii) Third party payment providers.
- 2) This designation order continues in force until its expiry date corresponding to 10 years after the date on which the order commences or until it is revoked or replaced, whichever occurs first.

Chapter 6 Our reasons for the network definition and recommended designation order contents

6.1 This chapter explains our reasons for the network definition and the recommended designation order set out in Chapter 6. It covers our approach to defining important concepts, including retail payment and the interbank payment network, and specifying:

- 6.1.1 the interbank payment network as the retail payment network;
- 6.1.2 a network operator;
- 6.1.3 payment products;
- 6.1.4 network rules;
- 6.1.5 participants; and
- 6.1.6 a designation duration.

Relevant considerations

6.2 In defining these important concepts and in finalising our recommended designation order, we have:

- 6.2.1 applied the relevant statutory definitions and satisfied the mandatory requirements for a designation order under the Act (see Attachment A paragraph A12); and
- 6.2.2 considered stakeholder feedback provided in our consultation process.

Our reasons for specifying the interbank payment network as the retail payment network to be designated

Requirements under the Act

- 6.3 A designation order must specify the network being designated.¹³⁴
- 6.4 We recommend the designation specifies the interbank payment network as the retail payment network to be designated. This has not changed since the proposed designation we consulted on.

¹³⁴ Retail Payment System Act, s 14(1)(a).

Submissions

- 6.5 Payments NZ and other stakeholders submitted several recommendations and views on the network we specified in our proposed designation. Payments NZ:
- 6.5.1 recommended that the designation focuses on retail payments, and be repositioned to cover the "retail payment network", and that the full interbank payments network should not be designated;¹³⁵
 - 6.5.2 recommended that the designation be limited to account to account retail payments only;¹³⁶
 - 6.5.3 recommended that the Commission only designate specific Bulk Electronic Clearing System (BECS) payment instruments in relation to their usage in retail payment use cases;¹³⁷ and
 - 6.5.4 submitted that the Commission does not have a mandate over the entire interbank payments network, and that the Commission is limited to retail payments when acting under the legislation.¹³⁸ Westpac and ANZ also considered the scope of designation is too expansive and goes well beyond retail payments.¹³⁹

Response to submissions

- 6.6 We have considered stakeholder feedback on the network definition, including concerns that the network definition is too broad because we are proposing to designate a network that facilitates more than retail payments.

¹³⁵ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 2, page 3 para 3, page 4 para 3, page 5, page 15 para 1.

¹³⁶ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 7 to 8, para 1 at page 15.

¹³⁷ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4 para 4.

¹³⁸ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 6.

¹³⁹ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 6 to 7; ANZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), response to question 5, page 4; Westpac "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), para 4.11.

- 6.7 We agree that non-retail payments occur on the interbank payment network and agree that, if the network was designated, the Commission has no mandate to regulate the non-retail aspects of the network. However, the interbank payment network is nonetheless a retail payment network because it is a collection of participants, arrangements, contracts, and rules that facilitate a class of retail payment.¹⁴⁰
- 6.8 We are satisfied that the network definition is appropriate. However, in light of these submissions, we have made changes so that the recommended designation is clear that the Commission can only regulate retail payments that occur on this network by adding the term "retail payments" at 1(b)(i) to (iv) and 1(c) of our recommended designation order.

Our reasons for defining the interbank payment network in this way

- 6.9 The Act defines "retail payment network" to mean the participants, arrangements, contracts, and rules that facilitate a class of retail payment.¹⁴¹ The interbank payment network is a retail payment network because it comprises of participants, arrangements, contracts and rules that facilitate retail payments. A more detailed explanation as to how we have defined the interbank payment network is set out in Chapter 5 (see paragraph 5.7).

Submissions about our definition of the interbank payment network

- 6.10 Payments NZ raised several issues on our approach to defining the "interbank payment network" in our Consultation Paper. Payments NZ submitted that:¹⁴²
- 6.10.1 the term "interbank payment network" is not in the Act, the FMI Act, and is not used internationally (for example the Principles for Financial Market Infrastructures issued by the Committee on Payments and Market Infrastructures and IOSCO);
 - 6.10.2 Payments NZ previously drew attention to this in its submission on our Request for Views Paper.

¹⁴⁰ Retail Payment System Act, s 7.

¹⁴¹ Retail Payment System Act, s 7.

¹⁴² Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 6.

6.11 Payments NZ's submission on our Request for Views Paper made similar points and raised issues on how we defined the "interbank payment network" including that:¹⁴³

6.11.1 the definition encompasses a payment instrument [electronic credit] that is used far more broadly than the scope of the Act, and the rules for the electronic credit are far broader than payments between consumers and merchants; and

6.11.2 Payments NZ rules are not restricted to categories of payments such as an electronic credit within a retail environment, are written to cater for all use cases, and are not segmented to account for the specific requirements of the various customer sectors.

Response to submissions

6.12 We have considered the points raised in Payments NZ's submissions. We remain satisfied that the interbank payment network is a payment network in New Zealand and is the relevant retail payment network for consideration given that open banking payments use the interbank payment network.¹⁴⁴ Our definition of this network is largely unchanged. We set out below our response Payments NZ's concerns.

The interbank payment network is a network recognised by market participants

6.13 We consider that the interbank payment network is widely understood in the New Zealand setting to refer to the payment network that facilitates the class of payments corresponding to payments between and within banks (see our full definition above at paragraph 5.7).

6.14 While we agree with Payments NZ that this network facilitates a class of payment that is wider than "retail" payments, and that the term is not used in the Act or the FMI Act, we consider the interbank payment network is a concept that is widely understood by market participants, including Payments NZ. Payments NZ's use of the term in its own submissions, and other documents, supports this.

¹⁴³ Payments NZ "Submission on Retail Payment System Payments Between Bank Accounts" (September 2023), responses to questions 20 and 21 at pages 10 to 11. Available at https://comcom.govt.nz/_data/assets/pdf_file/0028/332785/Payments-NZ-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹⁴⁴ We note our reasons for recommending designation to encourage and assist the timely implementation of open banking payments through a thriving API enabled payment ecosystem are provided in Chapters 2 to 4.

- 6.15 We also acknowledge that the term "interbank payment network" does not appear in the Act and in the FMI Act. However, these are pieces of legislation only and are not intended to identify all relevant payment networks or otherwise comprehensively describe the payments landscape. Similarly, principles issued by international bodies cannot be expected to describe the local landscape.
- 6.16 Having named the network as the interbank payment network, we also recognise that on-us or intrabank payments are also made using this network. However, we consider that, in the payments context, it is widely understood that the term "interbank" includes interbank and intrabank payments.

The interbank payment network satisfies the definition under the Act

- 6.17 We note that the Act defines "retail payment network" to mean the participants, arrangements, contracts, and rules that facilitate a class of retail payment.¹⁴⁵
- 6.18 The interbank payment network satisfies the criteria for a retail payment network. We do not agree with Payments NZ that because the interbank network has retail and non-retail aspects, that it cannot be a retail payment network. We find that the Act does not discriminate against payment networks that have both retail and non-retail aspects. We note that Payments NZ's description above shows its rules are not restricted, and do not naturally split, to either retail or non-retail payments (see paragraph 6.11).

Definition of retail payment

- 6.19 A retail payment is the transfer of monetary value by a consumer to a merchant for the supply of goods and services.¹⁴⁶

¹⁴⁵ Retail Payment System Act, s 7.

¹⁴⁶ Services includes the supply of goods or the performance of work under a contract of service. Retail Payment System Act, s 7.

Figure 6.1 Consumers and merchants can be people, private sector or government



Submissions

- 6.20 Payments NZ and Westpac submitted that our proposed designation includes non-retail payments, as a result of including BECS rules that cover a wide range of payment instruments with which both retail and non-retail payments are made, and is too broad.¹⁴⁷ Payments NZ submitted:¹⁴⁸

Our BECS rules cover a wide range of payment instruments such as social welfare payments, direct debits, ATM settlements, point of sale inter-bank settlements, bill payments, direct credits and automatic payments. Some of these have no relation to retail payments at all.

[I]t should be understood that open banking is used extensively for non-retail payment purposes. Examples of non-retail open banking payments include salaries/wages, person-to-person payments, customer funds transfers between their own accounts at another bank, investment contributions (like KiwiSaver), tax payments, charitable payments, etc.

- 6.21 Westpac submitted:¹⁴⁹

In our view, the inclusion of BECS rules relating to payment instruments and all BECS governed payment instruments goes beyond the scope of a retail payment network. BECS payment instruments can be used for a wide range of purposes including government benefit payments, wage and salary payments, loan repayments and payments between individuals. Although the RPSA provides relatively broad definitions of consumer and merchant we do not consider all payments that are made using BECS payment instruments would be considered “retail payments”.

¹⁴⁷ Westpac “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), paras 4.11 and 3.9 to 3.13; and Payments NZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), pages 6 to 7. See also ANZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), para 2.1.4.

¹⁴⁸ Payments NZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), pages 6 to 7.

¹⁴⁹ Westpac “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), para 4.11.

Response to submissions

- 6.22 Again, we agree that the interbank payment network facilitates some payments that are not retail payments, but for the reasons set out above, we are satisfied that the network is a retail payments network.
- 6.23 We also note that these submissions appear to be based on a misunderstanding of the breadth of the definition of retail payment in the Act. The definition of retail payment in the Act is broader than in other laws, such as the Financial Markets Conduct Act 2013 (**FMC Act**). The FMC Act distinguishes between "wholesale" and "retail" clients, investors and products and has different requirements for each. There is no such distinction under the Act, and retail payments under the Act will involve participants who are wholesale participants under the FMC Act.
- 6.24 That is because the definition of a retail payment under the Act relates the role of the participants to the acquisition and supply of goods or services, not their characteristics. A consumer is anyone (e.g. individual, business or government no matter how large or small) who acquires goods or services from a merchant. A merchant is likewise anyone (e.g. individual, business or government no matter how large or small) who supplies those goods or services to a consumer.
- 6.25 Given this broad definition, retail payments are all payments between a consumer and a merchant - including wage and salary payments (a contract for services is a service under the Act), investment contributions (the investment provider is providing a service), loan repayments (the lender is providing a service) and payments between individuals where one individual is providing goods or services to another.

Our reasons for specifying Payments NZ as a network operator

- 6.26 Our recommended designation specifies Payments NZ as a network operator as required by s 14(1)(b) of the Act.¹⁵⁰ Under the Act, network operator or operator, in relation to a retail payment network, means any person that is or does one or more of the following:¹⁵¹
- 6.26.1 is wholly or partly responsible to the participants (or any of them) for the network rules;
- 6.26.2 operates or manages the network or the core infrastructure of the network.

¹⁵⁰ Retail Payment System Act, s 4(1)(b).

¹⁵¹ Retail Payment System Act, s 7.

- 6.27 We consider Payments NZ to be a governing body responsible for development and management of interbank payment network rules.

Submissions

- 6.28 Payments NZ submitted several points in respect of the network operator content that we proposed in our Consultation Paper, including that:
- 6.28.1 the designation should separate the roles of the API Centre and BECS, even if Payments NZ is referenced as an operator twice.¹⁵² On a related point, Banzpay queried whether the designation should name the API Council;¹⁵³
 - 6.28.2 it is not necessary to designate BECS but that if the Commission does include BECS, then Payments NZ should remain as the network operator;¹⁵⁴
 - 6.28.3 third party providers who operate "non-standardised access methods" be designated as network operators.¹⁵⁵

Response to submissions

- 6.29 We note Payments NZ recommendation to exclude BECS from the designation or, to alternatively, reference Payments NZ as network operator for BECS and the API Centre separately. We understand that Payments NZ considers BECS and the API Centre do not fall under the same "network umbrella".¹⁵⁶

¹⁵² Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 15 para 1, page 4 para 7, page 9 including at para 7.

¹⁵³ Banzpay "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4 at 9(5).

¹⁵⁴ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 15, para 2.

¹⁵⁵ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 10 and 16, para 5.

¹⁵⁶ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 9.

- 6.30 At this time, we have no interest in changing Payments NZ's BECS rules, nor the rules for other settlement and clearing systems that Payments NZ operates. We appreciate Payments NZ's concern over of the designation of BECS in this regard. However, Payments NZ is an operator of the interbank payment network and this extends to rules setting, operation and/or management of both the BECS system and the API Centre (and the API Council, among other things).¹⁵⁷ We consider that stating this in the designation provides clarity for stakeholders. We reiterate that we could only exercise our powers in respect of retail payments made on that network and this extends to BECS, as with all aspects of the network.
- 6.31 In response to Payments NZ recommendation to refer to third party providers who operate "non-standardised access methods" as network operators, we note that third party providers are captured in our recommended designation as participants. We consider this addresses Payments NZ's concerns and we discuss this further in our reasons in relation to participants.
- 6.32 Finally, we note Payments NZ's recommendation to specify Payments NZ as "the" (rather than "a") network operator if BECS is to be included in the designation. We agree that Payments NZ is the primary or principal network operator of the interbank bank payment network, but it is not the only potential network operator. For example, we note that RBNZ is technically a network operator of the interbank payment network because it sets rules under the FMI Act for financial market infrastructure required to clear and settle payments between two different banks.

Our approach to payment products in the designation

- 6.33 A designation order may specify the payment products in the designated network.¹⁵⁸ Our recommended designation specifies that the payment products include all BECS governed payment instruments. This has not changed since our draft proposal.

Submissions

- 6.34 Payments NZ recommended that only the direct credit instrument be designated, and only for when it is used in retail payment use cases.¹⁵⁹ Payments NZ submitted that:¹⁶⁰

¹⁵⁷ We note we have refined the way we name Payments NZ in our recommended designation order.

¹⁵⁸ Retail Payment System Act, s 14(2)(a).

¹⁵⁹ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4 para 5, page 8.

¹⁶⁰ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 8.

- 6.34.1 only BECS payment instruments used in open banking retail payments should be designated (i.e. direct credits, which are used as the foundational open banking payment instrument);
- 6.34.2 Payment Initiation standard only utilises direct credits; and
- 6.34.3 if the Commission proposes to designate any other BECS payment instrument, it should provide the rationale (where other BECS payment instruments include bill payment, automatic payment, direct debit, POS settlement, ATM settlement, social welfare).¹⁶¹
- 6.35 BNZ also submitted that only the direct credit payment instrument is used for open banking and that it is not necessary for the scope of designation to cover other BECS payment instruments (such as automatic payments, bill payments, and direct debits).¹⁶²

Response to submissions

- 6.36 In considering stakeholder feedback on our proposed designation in our Consultation Paper, we have considered an alternative to specify only BECS governed direct credit payment instruments. However, we find that this alternative would impact clarity for stakeholders. We provide our rationale below.
- 6.37 Under the Act, payment product means a class of retail payment within a retail payment network (for example, personal or commercial retail payments within a retail payment network).¹⁶³
- 6.38 We acknowledge submitters' views that direct credit payment instruments (direct credits are one-off payments) are the foundational open banking instrument, and the only BECS payment instruments currently used in open banking retail payments.
- 6.39 While we agree on these points, a retail payment network is broader than a single type of payment product or payment instrument alone and, as we have noted above, we need to name a network to satisfy the requirements under the Act. All payment products on the network are in scope, whether named or not, and we find that Payments NZ's suggestion would diminish clarity on this point.

¹⁶¹ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 6 to 8.

¹⁶² BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), para 2.2.2.

¹⁶³ Retail Payment System Act, s 7.

- 6.40 We also note that while these payments currently use SBI for clearing, it is possible that some of the payment instruments may use a new clearing system (see paragraph 5.8). Likewise, there may be new payment instruments developed in which API functionality would benefit consumers and merchants. We note stakeholder interest in these matters.¹⁶⁴

Our approach to network rules in the recommended designation

- 6.41 A designation order may specify documents that set out some or all of the network rules (whether the documents are referred to by name or description).¹⁶⁵
- 6.42 Our recommended designation specifies that network rules include the rules (as updated from time to time) described as:
- 6.42.1 the BECS rules that relate to payment instruments in relation to retail payments;
 - 6.42.2 the Payments NZ rules that relate to network participants of BECS in relation to retail payments;
 - 6.42.3 the Payments NZ rules that relate to network participants of the API Centre, in relation to retail payments;
 - 6.42.4 the API Centre API rules in relation to retail payments, including standards and non-functional guidelines, frameworks and policies.
- 6.43 We have refined our proposed approach to network rules, which we explain below in response to submissions. In addition, we have replaced "called" with "described as" to reflect that we are describing documents that set out some of the network rules, rather than naming documents.

Consultation proposal

- 6.44 Our draft designation specified that the network rules include the rules (as updated from time to time) called:¹⁶⁶
- 6.44.1 the BECS Rules that relate to payment instruments;
 - 6.44.2 the Payments NZ membership rules that relate to the BECS participants;

¹⁶⁴ See, for example, Banzpay "Submission on Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4, response to question 9, para 6.

¹⁶⁵ Retail Payment System Act, s 14(2)(b).

¹⁶⁶ Commerce Commission "Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (27 March 2024), page 45.

- 6.44.3 the Payments NZ membership rules that relate to the API Centre members;
- 6.44.4 the API Centre API Standards and non-functional guidelines, frameworks and policies.

Submissions

- 6.45 We received submissions covering a range of issues in relation to network rules.
- 6.46 Payments NZ submitted that the scope of designation be limited to the relevant functions and payments standards of the API Centre.¹⁶⁷ Payments NZ recommended that BECS membership rules should not be included in wording of the designation at all. Payments NZ submitted points including:¹⁶⁸

The drafting of the Commission's current designation includes "the Payments NZ membership rules that relate to the BECS participants". This will almost certainly overlap with the anticipated FMI designation of the settlement before interchange system by the Reserve Bank. In that event, any changes to those BECS rules would be subject to the approval of the Reserve Bank. These changes could also necessitate the approval of the Commission if a directive is issued under section 24(2) of the RPS Act.

We believe that considerations under the FMI Act are far more relevant to the membership rules for BECS (which are closely linked to the settlement before interchange system rules) than to any proposed designation under the RPS Act. Furthermore, we fail to see the relevance of the BECS membership rules in the context of the outcomes the Commission is looking to achieve in relation to a thriving API enabled ecosystem.

- 6.47 Banzpay suggested replacing the term "membership rules" at:¹⁶⁹
 - 6.47.1 1(b)(ii) with the clearing system [BECS] participants bound by those clearing system [BECS] rules; and
 - 6.47.2 1(b)(iii) with "terms and conditions".
- 6.48 Banzpay submitted for further change to 1(b)(iii), to replace "API Centre members" with "Standards Users", to avoid the implication that Community Contributors who are not yet using the standards issued by the API Centre might fall within the designation.

¹⁶⁷ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 3 para 5.

¹⁶⁸ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 12 to 13.

¹⁶⁹ Banzpay "Submission on Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4.

- 6.49 Payments NZ also recommended that any designation of standardised APIs should relate solely to payments, and that the Commission explicitly states that its designation relates only to payment standards (i.e. the standards relevant to retail payments which may include payment consents, payment initiation, and/or payment-related event notifications).¹⁷⁰
- 6.50 Payments NZ reasoned that:¹⁷¹
- Although Account Information API standards are a crucial aspect of open banking and a flourishing API-enabled ecosystem, they do not constitute retail payments.
- 6.51 Worldline queried why CECS is not included in the designation.¹⁷² Revolut submitted that rules should be defined on payment rails and transactions, not technology.¹⁷³

Response to submissions

- 6.52 The Act defines network rules as rules that set out (among other things) the following:¹⁷⁴
- 6.52.1 how the network is to be constituted (for example, as a set of arrangements between its participants or as a legal person with whom its participants are to interact);
 - 6.52.2 how activities on the network are to be carried out;
 - 6.52.3 the rights and obligations under the network of its operators and participants.
- 6.53 This means that all network rules of the designated network (the interbank payment network) are covered by a network designation, irrespective of whether those rules are actually named or described in the designation.¹⁷⁵ Ultimately it is the network that is determinative.

¹⁷⁰ Payments NZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), page 4 paragraph 6, page 9 including para 6, page 16 para 4.

¹⁷¹ Payments NZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), page 9.

¹⁷² Worldline “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), page 14.

¹⁷³ Revolut “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), response to question 9, page 2.

¹⁷⁴ Retail Payment System Act, s 7.

¹⁷⁵ Retail Payment System Act, s 14.

- 6.54 Payments NZ submitted the BECS rules should be excluded from the designation. We have not made this change. We think that inclusion of the BECS rules is necessary to provide clarity as to the scope of the designation. We also note that, irrespective of the content of the designation order, the BECS rules are rules of the interbank payment network. This would also be the case for other relevant network rules not included in the designation order.
- 6.55 In response to Banzpay, we have considered these proposals to remove "membership rules". We agree that the term "membership" may impact clarity for stakeholders, particularly as Payments NZ itself distinguishes between "members" and "participants".¹⁷⁶ We note that the definitions in the Act apply in this recommended designation order. Therefore, at 1(b)(iii), we have not changed "rules" to "API Centre Terms and Conditions", and we have not changed to "Standards Users". However, we have made changes to both 1(b)(ii) and 1(b)(iii) to improve clarity by:
- 6.55.1 removing the term "membership"; and
 - 6.55.2 reworking other terms "BECS participants" and "API Centre members" to "network participants of" to describe participants of the interbank payment network (as defined under the Act) that participate in these parts of the interbank payment network.
- 6.56 For clarity, we have also included "terms and conditions" as an example, among others, of API Centre rules in relation to retail payments at 1(b)(iv).
- 6.57 In considering Payments NZ's recommendation on designation of standardised APIs, we note this is relevant to 1(b)(iv) in our draft designation and indicates an alternative such as "API Centre API Payment Standards". We agree that the Commission could not impose standards beyond the retail payment scope of open banking. As we have previously stated, we are interested in the payments aspects of open banking.¹⁷⁷ To address this concern we have updated 1(b)(iv) in our recommended designation order.

¹⁷⁶ See Payments NZ for information on membership and participation respectively, available at: <https://www.paymentsnz.co.nz/join-us/membership/> and <https://www.paymentsnz.co.nz/join-us/participation/>.

¹⁷⁷ Commerce Commission "Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network" (27 March 2024), para 3.10.

- 6.58 For clarity, we consider that account information APIs are integral to the promotion of a thriving API enabled "retail" payment ecosystem. Market outcomes for merchants and consumers in API enabled payments will be impacted by the delivery, functionality, and performance of account information APIs. For example, open banking bill payments that are triggered when income is received in the payer's bank account will rely on account information and payment initiation APIs.
- 6.59 In response to Worldline, we note that the interbank payment network is the network defined in Chapter 5.

Our approach to classes of participants in the designation

- 6.60 A designation order may specify the classes of participants in the designated network.¹⁷⁸ A participant is either a network operator or a service provider in the network.¹⁷⁹
- 6.61 Our recommended designation specifies that the participant classes include registered banks in NZ and third party payment providers. This is unchanged from our proposed designation.

Submissions

- 6.62 Several submitters were concerned that our scope of participants is too narrow and proposed changes.
- 6.63 Submissions concerned with the breadth of the participant class in a general sense included ASB and Akahu. For example:
- 6.63.1 ASB recommended that the designation cover all market participants including global platforms, fintechs, providers, and schemes. ASB reasoned that designation of all participants will ensure there is a level playing field for a thriving API enabled ecosystem.¹⁸⁰
- 6.63.2 Akahu encouraged ensuring that the third party payment provider definition is broad enough to enable different participants such as service providers, technical service providers, and direct participation from merchants.¹⁸¹

¹⁷⁸ Retail Payment System Act, s 14(2)(c).

¹⁷⁹ The Act s7, "participant, in relation to a retail payment network, means a person that is a network operator or any other service provider".

¹⁸⁰ ASB "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 2.

¹⁸¹ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), response to question 9, page 3.

6.64 Several submissions recommended the participant class should include providers of methods that we described as "sub-optimal" methods in our Consultation Paper.

6.64.1 Payments NZ interpreted the proposed designation to not include these methods, which it describes as "impersonated access methods" used to facilitate screen scraping and reverse engineering techniques.¹⁸² Payments NZ submitted that these methods are a common way to initiate a retail payment between a consumer and a merchant, and that the Commission should designate these access methods and take a stronger stance.¹⁸³ Worldline and BNZ provided similar views.¹⁸⁴ Payments NZ submitted that the designation should be framed so that it can cover more than one access method.¹⁸⁵

6.64.2 Payments NZ recommended that the Commission use the term "impersonated access", to correctly describe the situation where one party uses the credentials of another to access a system.¹⁸⁶

6.64.3 Akahu submitted banks should be required to support existing connectivity methods (sub-optimal methods) if the required APIs are unavailable or insufficient.¹⁸⁷

Response to submissions

6.65 There are numerous current and future participants and listing them all in the designation order would not be practical. We have therefore included a non-exhaustive list of key participant classes to provide clarity as to the extent of the interbank payment network to market participants.

¹⁸² Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 3 at para 6, pages 9 to 10.

¹⁸³ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4 at para 9, page 10, appendix 1 page 19.

¹⁸⁴ Worldline "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), para 37; BNZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), paras 5.2 to 5.3.

¹⁸⁵ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 6,10, and 15 at para 3.

¹⁸⁶ Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), page 4 at para 8, page 10.

¹⁸⁷ Akahu "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), response to question 16, page 6.

- 6.66 In response to Payments NZ's submission that we should designate impersonated access methods, we agree that the access methods that we have described as “sub-optimal access methods” in our Consultation Paper are a common way to initiate a retail payment between a consumer and a merchant. Providers of these access methods are third party providers in our network definition and recommended designation. Our draft designation did not specify the access method that third parties use, and we have added this clarity that third party payment providers are included regardless of their access method. We have reflected the example of “consented impersonated access” in the recommended network definition.
- 6.67 In response to Akahu’s submission on “third party” definition, we note that “participant” has a broad definition under the Act that includes payment and infrastructure service providers in the network but excludes merchants.¹⁸⁸
- 6.68 In the context of API enabled payments, one of the access methods is the use of standardised API endpoints provided by registered API providers. We consider banks may also want to be third parties who use this access method, and offer API enabled products and services themselves to their customers or prospective customers, as noted in our Consultation Paper.¹⁸⁹

Our reasons for including a designation duration of 10 years

- 6.69 A designation order must state its expiry date, which must be no later than 10 years after the date on which the order commences.¹⁹⁰ There is no stated minimum duration.
- 6.70 Our recommended designation states a designation duration of 10 years. This duration is unchanged from our draft designation. We have changed some wording to clarify the designation specification.

Submissions

- 6.71 Payments NZ recommended that the duration of the designation should be five years, to better align with the CPD.¹⁹¹

¹⁸⁸ The Act s7, “Service provider, in relation to a retail payment network, means any person that provides or facilitates the provision of payment services in the network (for example, a payment or an infrastructure service provider), but does not include a merchant. This includes any infrastructure that is necessary for the provision of the network's payment services.”

¹⁸⁹ Commerce Commission “Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network” (27 March 2024), see “third party” at page 5.

¹⁹⁰ Retail Payment System Act, s 15.

¹⁹¹ Payments NZ “Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network” (May 2024), page 4 para 13, page 12 para 13, page 14, page 16 para 6.

- 6.72 Payments NZ submitted that a five year duration would accommodate the Commission's role and facilitate more flexibility.¹⁹²

The Commission's designation is proposed to remain in effect for 10 years. It is projected that the CPD legislation might take about 4 years to become fully effective. The relationship between the Commission's designation of retail payments and CPD legislation for the remaining six years remains unclear.

A 5-year horizon would align with the CPD legislation being fully effective and provide an opportunity to realign the regulatory landscape to accommodate the Commission's role.

Response to submissions

- 6.73 We have considered the five year alternative, and we recognise this is an area of judgement. However, in our view a 10 year duration would better enable the realisation of the benefits of designation. These benefits include changing incentives on industry by enhancing the credible threat of regulation over the long-term for the long-term benefit of merchants and consumers in New Zealand. These incentives will complement the CPD legislation when it takes full effect, not duplicate it, and do so in a cost-effective way.
- 6.74 We also note that under the Act, there is a process to revoke the designation order before its expiry date.¹⁹³

¹⁹² Payments NZ "Submission on Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network" (May 2024), pages 13 to 14.

¹⁹³ Retail Payment System Act, s 15.

Attachment A Legal Framework and process for designation

A1 This attachment discusses the purpose and relevant provisions of the Act and the way in which the Commission has complied with the preconditions for making this recommendation.

The purpose of the Retail Payment System Act and the Commission's functions and powers

A2 The purpose of the Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand.^{194 195}

A3 The Act gives the Commission a range of functions and powers, including:

A3.1 recommending a network is designated;¹⁹⁶

A3.2 regulation of the designated network(s) (including their participants) through network standards and/or directions;¹⁹⁷

A3.3 issuing merchant surcharging standards;¹⁹⁸

A3.4 market monitoring and information dissemination; and¹⁹⁹

A3.5 investigating, compliance monitoring and enforcement.²⁰⁰

A4 The Commission's functions and powers must be exercised for the purpose of promoting competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand.²⁰¹

A5 To the extent that the Commission considers them relevant, we must also consider the following principles when exercising our functions and powers:²⁰²

¹⁹⁴ Retail Payment System Act, s 3.

¹⁹⁵ In this paper, we use the terms “businesses” and “merchants” interchangeably and these terms include entities such as the Crown, individuals, and sole traders.

¹⁹⁶ Retail Payment System Act, s 12.

¹⁹⁷ Retail Payment System Act, s 17.

¹⁹⁸ Retail Payment System Act, s 30.

¹⁹⁹ Retail Payment System Act, s 6(a) and (c).

²⁰⁰ Retail Payment System Act, s 6(b) and (d).

²⁰¹ Retail Payment System Act, s 4(1).

²⁰² Retail Payment System Act, s 4(2).

- A5.1 merchants and consumers should pay no more than reasonable fees for the supply of payment services; and
- A5.2 the retail payment system provides a reasonable degree of transparency.

Retail payment networks and the participants

- A6 A retail payment network means all the participants, arrangements, contracts, and rules that facilitate a class of retail payment. A retail payment is the transfer of monetary value by a consumer to a merchant for the supply of goods and services.²⁰³ Merchants and consumers can be people, businesses or other entities, the definitions relate to their role in the supply of goods or services. A consumer is a person (including any individual or business) that acquires goods or services from a merchant.
- A7 A person is a participant of a retail payment network if they are either a:
- A7.1 **Network operator** – a person that is wholly or partly responsible to the participants (or any of them) for the network rules and or operates or manages the network or the core infrastructure of the network, or
- A7.2 **Service provider** – that provides or facilitates the provision of payment services in the network (for example, a payment or an infrastructure service provider), but does not include a merchant. This includes any infrastructure that is necessary for the provision of the network's payment services.

Designation of a retail payment network under the Retail Payment System Act 2022

- A8 The Commission may recommend to the Minister that a retail payment network (such as the interbank payment network) be designated.²⁰⁴ This is the first time the Commission has recommended the designation of any retail payment network under the Act.
- A9 The Minister is not required to accept any recommendation made by the Commission. If the Minister accepts the recommendation, the Minister may then recommend to the Governor-General that the retail payment network be designated. It is for the Governor-General to, on the recommendation of the Minister, make an Order in Council declaring a retail payment network to be a designated network.

²⁰³ Services includes the supply of goods or the performance of work under a contract of service.

²⁰⁴ Retail Payment System Act, s 12.

The mandatory considerations before recommending a designation

- A10 In deciding whether to make a recommendation to designate under the Act, the Commission must consider the following:
- A10.1 any features of the retail payment network, or any conduct of participants in the network, that reduce, or are likely to reduce, competition or efficiency;²⁰⁵
 - A10.2 the nature of the network, including the number, value, and nature of the transactions that the network currently processes or is likely to process in the future; and²⁰⁶
 - A10.3 the Financial Market Infrastructures Act 2021 (FMI Act) and any other regulatory requirements in other New Zealand laws that the Commission considers relevant.²⁰⁷

The designation process

- A11 Before making a recommendation for designation, the Commission must:
- A11.1 Consult the Reserve Bank of New Zealand (RBNZ) if the network comprises any part of a system that is a designated FMI within the meaning of the FMI Act.²⁰⁸
 - A11.2 Consult affected operators of the network about the proposed designation, including the reasons for proposing to make a recommendation.
 - A11.3 Make the recommendation publicly available as soon as practicable after the recommendation has been made, including a statement of reasons for that recommendation.²⁰⁹

The content of a designation order

- A12 A designation order must specify both a network and at least one person that is an operator of the network.²¹⁰ In addition, a designation order may specify one or more of:²¹¹
- A12.1 the payment products in the designated network;

²⁰⁵ Retail Payment System Act, s 12(2)(a).

²⁰⁶ Retail Payment System Act, s 12(2)(b).

²⁰⁷ Retail Payment System Act, s 12(2)(c).

²⁰⁸ Retail Payment System Act, s 13(1)(a).

²⁰⁹ Retail Payment System Act, s 13(2).

²¹⁰ Retail Payment System Act, s 14(1).

²¹¹ Retail Payment System Act, s 14(2).

A12.2 documents that set out some or all the network rules; or

A12.3 classes of participants.

The consequences of designation

A13 A designation, on its own, will not impose any legal obligation on the network operator/s or the participants. However, designation of a network does allow the Commission to then exercise regulatory powers under the Act by:

A13.1 Issuing network standards for the designated network that:²¹²

A13.1.1 impose requirements on participants in the network (network operators and/or other participants or classes of participants); and

A13.1.2 set out requirements applying to the network with which the participants must ensure compliance;

A13.2 Issuing a direction notice to one or more participants of a designated network to take the action specified in the direction notice. A direction may require the recipients to do one or more on the following:²¹³

A13.2.1 set network rules;

A13.2.2 amend network rules;

A13.2.3 notify the Commission of any amendments made to network rules;

A13.2.4 apply for, and obtain, the Commission's approval before making amendments to network rules that are of a type identified in the direction as substantive amendments; and

A13.2.5 comply with one or more network rules.

A14 Before exercising those regulatory powers, we must first consult affected persons, or persons that the Commission considers to be representatives of affected persons, about the proposed regulation and reasons for it. We must also consider whether the proposed regulation is consistent with the purposes of the Act and the purpose and principles of exercising the Commission's functions and powers under the Act.

²¹² Retail Payment System Act, s 17.

²¹³ Retail Payment System Act, s 24.