



Payments NZ authorisation

Feedback on the draft determination

11 July 2024

1. Overview

We commend the thorough work that the Commission has done to identify and analyse the key issues arising from the authorisation application.

We acknowledge that the first round of submissions have been well-considered, and we limit our comments in this submission to the proposed conditions in the draft determination.

In our view, the proposed conditions will have mixed effectiveness. We remain of the opinion that approval of the authorisation application is unlikely to deliver the expected public benefits, even if the proposed conditions are applied.

2. Accreditation and Partnering Working Group

Third party engagement

The proposed conditions in paragraph 7.1 rely on high quality engagement from third parties in the proposed working group. We're concerned that high quality third party engagement will be lacking for the following reasons:

- **Participation:** There are 16 third parties that are [listed](#) as members of the API Centre on its website. Some of these third parties are disengaged, and are unlikely to contribute to the proposed working group. Others attend existing working groups sporadically, and may not be reliable as a source of meaningful third party participation. So the onus would be on a small number of third parties to provide consistent engagement over the proposed 18 month period.
- **Attrition:** Some third parties have discontinued API Centre membership for a variety of reasons, including becoming disillusioned with slow progress, and being unable to launch a viable service due to lack of delivery of APIs. Even some large third parties, such as Datacom and Equifax, have discontinued third party membership recently. Some of these third parties would have provided valuable engagement in the proposed working group, but we think it would be difficult to entice them back into API Centre membership if they have previously decided to leave.
- **Conflicts:** The Commission referenced submissions which point out that some third parties, like Visa and Mastercard, have existing commercial relationships with banks. The importance of these existing commercial relationships may prevent strong advocacy from certain third parties, or even influence voting in favour of bank interests in order to protect existing commercial interests. In addition, third parties intend to negotiate bilateral contracts with banks in relation to fees and other matters, so they

may be restricted in their ability to advocate strongly for fear of impacting those subsequent negotiations.

- **Resources:** It's difficult for many third parties to justify the time involved with deep engagement in API Centre working groups.
- **Low confidence in a workable outcome:** With the proposed working group, a third party will have no certainty that standard terms will be agreed, nor that any agreed terms will be commercially viable. Even if standard terms are agreed and are commercially viable, the third party will have no certainty that it will be able to subsequently negotiate a viable bilateral agreement with each bank in order to agree on fees and any other terms that fall outside of the standard terms. The longer that API Centre and bilateral contract negotiation processes take, the more it favours banks who benefit from the status quo.

Bank participation

There are 6 banks that are [listed](#) as members of the API Centre on its website, after Heartland Bank and The Co-Operative Bank discontinued their membership. One of the current member banks, TSB, does not actively participate in API Centre forums.

So the banks that are actively participating are New Zealand's 4 largest banks, which the Commission has described in its draft market study report as a "stable oligopoly", along with Kiwibank. As further described in the draft report, the large banks "put more focus on maintaining profit margins than seeking to gain market share". The slow development of bank-led open banking in New Zealand, and the limited contracts that have been established between banks and third parties, demonstrate that the large banks have generally been resisting rather than embracing open banking.

The banks that would be participating in the proposed working group are naturally incentivised to maintain the status quo and slow the development of a thriving open banking ecosystem.

Power imbalance with contentious issues

Much of the existing work within the API Centre has leveraged existing content from overseas, in particular the UK open banking standards. A lot of this content has a low level of contentiousness, so it has been relatively easy to find common ground among API Centre members and to develop open banking standards for New Zealand.

We're concerned that it will be more difficult to make progress on some of the highly contentious issues, such as liability allocation, that would need to be addressed in the proposed working group.

To illustrate this concern, two large banks recently decided not to deliver the [browser-based authentication](#) standard as part of the 30 May 2024 deadline in the API Centre's implementation plan. Despite co-designing and voting to approve this standard, these two

banks have recently taken the position that it is not secure and will not be offered. When an issue becomes contentious like this, it's difficult for the API Centre to resolve the issue.

In the proposed working group, we think that third parties would lack adequate negotiating power to create a fair environment for developing standard terms. For example, if half of the banks take an unreasonable position on a particular matter, third parties would have to choose between accepting that position or stalling progress. This fundamental dynamic means that banks would hold the power in the proposed working group because they benefit from the status quo.

A fair working group is essential for delivering public benefits

Given the issues described in this section, we don't think that any set of conditions that are applied to the proposed working group will ensure that the proposed arrangements deliver the potential public benefits.

3. API Centre Council

We think that the proposed conditions in paragraph 7.2 would have some positive impact.

However we note that the conflicts of interest discussed above would apply to the API Centre Council in a similar way to the proposed working group, and these conflicts would mitigate the potential benefit of the proposed conditions.

4. Payments NZ board

We support the proposed condition in paragraph 7.3.

5. API Centre's exemption regime

We support the proposed condition in paragraph 7.4, and we agree that the proposed arrangements are pointless if a bank could request an exemption from standard terms.

However we note that the inability to seek an exemption is likely to incentivise conservative behaviour from banks in the proposed working group, and that would limit the ability of the proposed working group to agree on viable standard terms. This is likely to accentuate the issue described above in the section titled "Power imbalance with contentious issues".

6. Future regulation

We support the proposed condition in paragraph 7.5.