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Tēnā koe

Commerce Commission Draft Determination on Payments NZ Authorisation Application

ASB welcomes the opportunity to make a submission in relation to the Commerce Commission's (**Commission**) draft determination on Payment NZ's (**PNZ**) application to establish a partnering framework (the **Proposed Arrangement**).

ASB supports PNZ's authorisation application as the Proposed Arrangement will help accelerate progress in modernising New Zealand's digital infrastructure, providing greater safety and security for New Zealanders from rising fraud and scams.

ASB is supportive of the proposed conditions in regards to decision making processes

ASB acknowledges the Commission's concerns that potential or perceived conflicts of interest arising from certain decisions at PNZ Board could stand in the way of the expected benefits of the Proposed Arrangement. ASB therefore supports the conditions proposed in paragraph 7 of the Commission's draft determination related to decision making processes and associated record keeping, if this will give confidence to government, regulators, industry and consumers in PNZ governance and decision-making.

API Centre exemptions regime is needed to support innovation and competition

ASB does not support the proposed condition to remove Standards Users' ability to apply for an exemption in relation to any Accreditation Scheme and Standard Terms and Conditions jointly developed and applied under the Proposed Arrangement, unless considerable flexibility is baked into the regime to account for unknown or unforeseeable risks.

ASB's aim is to support Third Parties to establish viable business models and ultimately offer consumers more choice at less cost. We therefore consider that it will be in the best interests of Third Parties and ultimately consumers for there to be flexibility in setting the accreditation requirements and applying Standard Terms and Conditions to suit different use cases and business models. Our preference is for the exemption regime to remain. However, we recognise the Commission's concerns that this regime may not be used for its

intended purpose. We would therefore recommend that the accreditation scheme and Standard Terms and Conditions have sufficient clarity, transparency and flexibility to allow for unknown risks or diverse needs of Third Parties to be adequately factored in.

Standard Users also have legitimate concerns that there may be some Third Parties for whom a partnership is not within its risk appetite. A key example would be where a Third Party may have a high-risk profile for AML/KYC. In such circumstances a “one size fits all approach” may not be in the best interest of NZ Inc. or consumers.

We cannot fully anticipate what the future will bring, so ASB considers it prudent to retain some flexibility to allow parties to deviate from a standard approach to support and foster diverse and innovative services or product offerings or address specific risks where appropriate.

More time if needed to develop the accreditation scheme and associated commercial terms

ASB considers that the potential benefits of the Proposed Arrangement are unlikely to be realised if authorisation is granted for a period of only 18 months. In selecting a period of 18 months we note the Commission has taken into consideration:

- Payments NZ’s estimate in its application that the accreditation scheme and standard terms and conditions could be developed and agreed within 12 months; and
- The timing of the Customer Product and Data Bill and the potential designation of an interbank payments network under the Retail Payment System Act 2022.

ASB does not necessarily share the Commission’s view that the accreditation scheme and standard terms and conditions could be developed, agreed, and operational within a period of 12 months. Even if it could be done in 12 months, a further six months is insufficient to properly establish and demonstrate a successful scheme. Such a short period could be a barrier to participants obtaining investment support. A longer authorisation period would allow time for the Proposed Arrangements to properly bed in and for participants to refine these as needed based on industry feedback, developments and the evolving regulatory environment. This would provide confidence for the regulator to adopt the scheme and terms into the new legislative framework.

ASB considers that a compromise, in the form of a three-year period, would sufficiently allow for this bedding in. This accounts for the fact that the most prepared third parties will already be connected to banks in open banking arrangements through existing bi-lateral agreements and processes. The accreditation scheme and Standard Terms and Conditions will need to be continually refined.

Sequencing with other regulatory developments

ASB notes the Commission’s conclusion that after 18 months the benefits arising from the Proposed Arrangement are likely to decrease due to the introduction the Customer Product and Data Bill and the potential designation of an interbank payments network. An

authorisation period of three years would both address the concerns outlined above and mitigate the risk that legislation progresses more slowly than the Commission expects at this stage. ASB is also of the view that future regulation and oversight of the interbank payments network and a digital economy more broadly needs to be reviewed. In the UK, a sub-regulator, the Payment Services Regulator was appointed to oversee rules and standards setting. Australia appears to be making similar moves for RBA to regulate interbank payments but delegate to a sub-regulator. If New Zealand was to follow suit, this would also take time to bed in.

Furthermore, if the Proposed Arrangement is given the time required to give it the best chance of success, then regulators and government agencies will have the opportunity to leverage the work already done and adopt the accreditation scheme and default standard terms and conditions in regulations made under the Consumer and Product Data Bill, providing significant time and cost efficiencies.

Other comments

The Commission notes that their proposed 18-month authorisation period is consistent with the expectation set out in their Draft Report for the Personal Banking Services Market Study, that the Government should ensure opening banking is fully operational by June 2026. As ASB has previously submitted, we are committed to progressing open banking in New Zealand for the benefit of consumers and we are resolute in our view that open banking must be supported by a strong Digital Public Infrastructure, which prioritises financial crime mitigation, removes unnecessary impediments from some aspects of the AML/CFT Act and enables the development of digital identity.

As ASB has stated previously, the scope of future deliveries (e.g. API v2.3) need to be reworked to ensure prioritisation of functionality that will deliver the most value to New Zealand customers, fintechs and the wider New Zealand economy. ASB believes there are some aspects of v2.3 which will not deliver value to New Zealanders (e.g. PDF statements) and another (web to web redirect) which will promote unsafe online behaviours that will put New Zealanders at greater risk of falling victim to fraud and scams.

ASB is keen to discuss its views further with the Commission and collaborate with the wider industry to build a world class digital infrastructure with safety and security at its heart, and which will ensure New Zealand remains competitive in an increasingly digital global economy.

Ngā mihi,



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