

Westpac New Zealand Limited

Submission to the Commerce Commission on the
*Consultation on the proposal to recommend the
designation of the interbank payment network*

9 May 2024



1. INTRODUCTION

- 1.1 This submission to the Commerce Commission (**Commission**) is made on behalf of Westpac New Zealand Limited (**Westpac**) *in respect of the Consultation on our proposal to recommend the designation of the interbank payment network (Consultation Document)*. Thank you for the opportunity to provide feedback on the proposals.
- 1.2 Westpac's contact for this submission is provided separately. There is no confidential information in this submission, and it can be published in full by the Commission.

2. SUMMARY

- 2.1 Westpac is committed to the successful and timely establishment of open banking and the potential benefits that it will deliver to both consumers and businesses. Westpac has committed significant resources to progress the industry initiatives led by Payments NZ (**PNZ**) and the API Centre and continues to collaborate and engage with PNZ and the API Centre in this regard.
- 2.2 Westpac also supports the Commission's monitoring efforts and believes that this is a proportionate and appropriate response to the issues it has identified. Westpac is fully committed to and is working towards understanding and meeting the expectations (**Expectations**) that the Commission has outlined relating to minimum requirements for a thriving API enabled ecosystem (**Minimum Requirements**) in its Open Letter published on 22 February 2024 (*Update on our Payments Between Bank Accounts work*). Westpac is committed to open and transparent engagement with the Commission in this regard.
- 2.3 Westpac believes that the industry and regulatory initiatives outlined above provide the industry with sufficient and credible incentives to deliver the Commission's Expectations and accordingly the designation of the interbank payment network under the Retail Payments System Act 2022 (**RPSA**) (**Designation**) which is aimed at achieving substantially similar outcomes, is unlikely to deliver net benefits to consumers and merchants over and above what these initiatives are likely to deliver.
- 2.4 Westpac believes that the regulation of open banking is best achieved through a single comprehensive regulatory framework that addresses risks and provides the necessary safeguards required for the successful delivery of an open banking framework, such as those proposed in the Customer and Product Data Bill (**CPD Bill**). Westpac supports expediting the implementation of this Bill as an alternative to a Designation.

3. KEY SUBMISSIONS

Regulation of open banking is best achieved through a single holistic regulatory framework that not only mandates delivery but also has appropriate safeguards for the exchange of customer data

- 3.1 With the prevalence of financial crime and sophisticated frauds both globally and in New Zealand, there are significant industry efforts underway to counter these developments, including through the establishment of the New Zealand Anti-Scam Centre to help identify and reduce fraudulent payments to "mule accounts". It is therefore essential that the development of a regulated open banking framework,

whether through a Designation or otherwise, does not undermine industry efforts by exposing customers to increased and unnecessary risk and therefore eroding consumer confidence and trust in the open banking ecosystem.

- 3.2 For this reason, it is important that any regulation of the interbank payment network is done in a holistic manner that considers all relevant risks, including the increased risks to consumer safety resulting from opening up access to consumer data. For example, necessary safeguards aimed at protecting consumers have been comprehensively considered in the development of the Consumer Data Right (CDR) by MBIE and expressed in Part 3 of the exposure draft of the CPD Bill. The CPD Bill sets out a number of protections to the exchange of customer data relating to consent, authentication of customer identity, notification, record keeping and complaints which are essential to ensuring that open banking is delivered in a manner that protects consumers from increased risk.
- 3.3 Whilst briefly noting concerns relating to fraudulent transactions in the Consultation Document at paragraph 3.54.3.3, the Commission has not elaborated on how it intends to address these risks 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.
- 3.4 Given the significant effort that has been expended in developing the CDR and the CDP Bill, Westpac believes that industry and regulatory efforts should be focussed on accelerating the implementation of the CPD Bill, as an alternative to accelerating open banking through a Designation, which based on current information appears to lack essential consumer safeguards.

Industry has sufficient and credible incentives to deliver open banking without a Designation

- 3.5 In recent weeks and against the backdrop of the draft report on the Market Study into personal banking services (**Market Study Report**), there has been heightened public interest and media attention given to the delivery of open banking in New Zealand. At the same time, API providers have publicly committed to and are working towards the delivery of the PNZ APIs in accordance with the binding minimum open banking implementation plan. Additionally, PNZ and the API Centre have instigated a number of initiatives to enhance transparency and continue momentum of industry initiatives.
- 3.6 In addition to this, the Commission has published its Expectations against which it will be monitoring industry progress. The combined effect of these interconnected initiatives is that banks have sufficient and strong incentives from both an industry, regulatory and reputational angle to meet the Expectations or face the threat of credible negative consequences.
- 3.7 Westpac considers that the Commission's current monitoring approach is the most cost-effective and proportionate regulatory response to the problem it has identified and will be effective in delivering the Minimum Requirements it has identified in a timely manner. We believe the Commission should allow the industry sufficient time to deliver against its Expectations before it makes any determination as to whether a Designation should be recommended.

The benefits of Designation must be weighed against the likely cost of regulation (and not Designation alone)

- 3.8 In considering the potential benefit of Designation, Westpac believes that the Commission should consider that all relevant costs of Designation (including costs associated with regulation) given that as

the Commission states one of the benefits of Designation is the credible threat of regulation if the Commission does not see progress from the industry. This implies that there is a real risk that regulation will occur if a Designation is made. Given this risk, Westpac considers the Commission should consider whether the net benefits/costs associated with regulation would result in better outcomes for consumers and merchants compared to a scenario where no Designation is made.

Nature and scale of the interbank payment network

- 3.9 The RPSA defines “retail payment” as a payment by a consumer to a merchant for the supply of goods or services. The Consultation Document defines the interbank payment network as encompassing all bank transfers including direct debits, and automatic payments amongst other payments instruments. It has noted wages, invoices, dividends, ongoing mortgage and rent payments as examples of payments that use the interbank payment network. Whilst acknowledging the terms “consumer” and “merchant” have been defined broadly under the RPSA, the Commission’s definition of this network purports to capture payments that, in our view, are inconsistent with the purpose and spirit of the RPSA. In Westpac’s view these payments do not strictly involve “a payment by a consumer to a merchant for the supply of goods or services” as stipulated by the RPSA.
- 3.10 Furthermore, based on its proposed definition, the Commission is of the view that the scale of the interbank payment network and therefore the potential unmet demand is significant (citing the value of payments between different bank accounts in 2023 was \$1.75 trillion). We assume this figure is based on all payments between accounts, whether they are in fact retail payments or otherwise.
- 3.11 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.
- 3.12 Similarly, the Commission should consider whether the broad characterisation of the retail payment network is an accurate predictor the actual level of unmet consumer demand and unrealised benefit that the Commission has stated.
- 3.13 The Commission has referred to uptake in certain segments of the market as an indicator that there is significant unmet demand for API enabled payments products more widely. We would caution against treating this as evidence of broader significant unmet demand outside of these segments which is dependent on complex consumer needs and behaviours and whether these are met with the right payment products. In this regard we refer to the slow uptake of open banking in Australia and the United Kingdom below as a useful illustration of this complexity.
- 3.14 ***A Designation may not deliver the Commission’s objectives***
- 3.15 The Commission’s key objective for proposing a Designation is the timely implementation of a thriving API enabled ecosystem and the Commission has outlined the Minimum Requirements that would be relevant for the purposes of determining whether this has been achieved. Whilst we agree with the Minimum Requirements identified we note the following:
- (a) The delivery of a “thriving API enabled ecosystem” depends on factors that are unlikely to be influenced by a Designation such as whether and how fintechs consume open banking APIs and consumer preference and uptake. Consumer preference can be impacted by a

number of factors such as perceived security, convenience and reward benefits that may be available when compared to other payment options.

- (b) As an example, in the United Kingdom, five years since the adoption of standardised APIs for open banking, there are only seven million active users, significantly below the expectation of the industry. It has been suggested that there are two potential causes for this. First, there is a lack of incentive for customers to use account to account payments versus card payments. Secondly, there are inherent customer concerns about the degree of customer protection in open banking payments.¹
- (c) Similarly, in Australia, since its launch in 2019, the uptake of its CDR has not been as high as initially expected with active users making up less than 0.15% of total unique customers of the major banks². Additionally, fintechs have not driven significant change in switching behaviour, despite some evidence of increased willingness to switch mortgage providers as interest rates increased in 2023.³ The Australian Federal Government has recognised the need to address issues having funded a statutory review of its CDR and announcing a pause to the CDR's expansion into other sectors in order to "focus immediately on improving data quality and deepening participation in existing sectors, improving cyber security and expanding awareness".⁴

3.16 The above examples suggest that the emergence of a thriving API enabled ecosystem may not materialise or accelerate in response to regulation. Therefore, we would urge the Commission to consider whether a Designation (and associated costs of regulation) will deliver the stated objectives and purported benefits over and above what is likely to be delivered under the current industry and regulatory initiatives which are in progress (including the CDR). Additionally, the above examples further emphasise our earlier point relating to the critical need for ensuring the right consumer safeguards are in place to promote participation in the open banking ecosystem.

A standardised partnering framework that is safe, seamless and efficient is essential

3.17 As noted above, one of the key elements to a successful open banking system is consumer confidence in that system. This depends on consumers having confidence that they will be protected if they participate in the system and will not be exposed to unnecessary risks. A key requirement to achieving this consumer confidence is a standardised partnering framework (including standardised accreditation criteria and default standard terms and conditions) which is designed to ensure that all participants adhere to a baseline standard of responsibility and defined obligations when handling sensitive customer data. In this regard the following must be noted:

- (a) accreditation criteria must be of a sufficient standard that does not expose consumers to unnecessary risk through third parties accessing their data. To promote confidence and trust in the system and to protect customers from increasingly sophisticated frauds and scams, the baseline standard must be consistent with the high standard that consumers would expect from participants in a regulated landscape; and

¹ [deloitte-fintech-pulsecheck-2024-report \(1\).pdf](#)

² [Consumer Data Revolution: Empowering Australia's Future | Deloitte Australia](#)

³ [Consumer Data Revolution: Empowering Australia's Future | Deloitte Australia](#)

⁴ [Consumer Data Revolution: Empowering Australia's Future | Deloitte Australia](#)

- (b) there is clear and appropriate allocation of liability between participants so that the participant that is best placed to manage and resolve risk is responsible for doing so. In the absence of such, weakness is created in the system which expose customers to increased risk and impair trust and confidence and participation in the system.

3.18 Our view is that these elements are necessary prerequisites to a successful and safe open banking system. Whilst we support industry efforts to develop a standardised partnering framework (including Payments NZ's application for an authorisation to achieve this), we believe that a standardised partnering framework delivered through the regulatory model (leveraging industry work) as outlined in the CDR is the optimal way to ensure that risks are objectively addressed and liability for such risks is appropriately allocated in a manner that will avoid any perceptions of bias.

A successful open banking system must be economically sustainable

3.19 In order for open banking to continue to develop and support new and innovative payment use cases for the benefit of consumers and businesses, the open ecosystem needs to be economically sustainable for all participants. In practice this means that equitable and commercially viable arrangements are reached between parties and in particular API providers must be able to charge commercially viable fees for access to APIs. In the absence of this, a subsequent lack of investment in API infrastructure is likely to ensue. We refer to EFTPOS as an example of a free payment service, which has resulted in a lack of investment and innovation.

3.20 Significant investment has been made in API infrastructure within Westpac. This involves not only investment in the provision of APIs but costs associated with wrap around ongoing support services to third parties, ongoing monitoring of third parties, as well as compliance, risk and product governance to ensure safe, supported and efficient access to customer data.

3.21 Any determination as to reasonable pricing should take into account the investment and ongoing costs borne by banks in ensuring that APIs are provided in a safe, secure and efficient manner.

Intersection with Market Study Report is unclear

3.22 The Market Study Report recommends the acceleration of open banking with the June 2026 backstop along with additional API requirements such as product information and "other actions" initiation which are not referred to in the Consultation Document. We ask the Commission to provide clarity in this regard. We note that as a starting point Westpac would view product information and other "actions" APIs outside of the functionality required to promote the proliferation of payments products which would enhance competition and efficiency in the interbank payment network.

3.23 The industry led work has to date focussed on payment APIs and related functionality such as provision of account information. These are relatively simple use cases compared to the complexity that arises with possible action initiation related APIs. Our assumption is that the proposed Designation and the Commission are focussed solely on payments-based APIs and that any steps towards more complex use cases would be addressed under the CPD Bill framework, which specifically references action initiation. We believe that clarity on this point is needed as some of the proposed use cases mentioned by the Commission in the Consultation Document may not be addressed by simple payments-based APIs.

4. RESPONSE TO CONSULTATION QUESTIONS

Question 1: Do you agree with our preliminary position that designation of the interbank payment network will promote competition and efficiency in the retail payment system for the long-term benefit of consumers and merchant? If not, why not?

- 4.1 We think that there are now sufficient incentives on banks, PNZ and the API Centre to deliver the minimum requirements that would promote competition and efficiency in the interbank network and as such a Designation is unlikely to deliver benefits over and above what these initiatives will deliver. Please refer to paragraphs 3.5-3.7 above.
- 4.2 Additionally, as discussed in paragraphs 3.15 and 3.16, the delivery of a thriving API enabled ecosystem depends on factors outside of the control of banks such as whether and how fintechs consume open banking APIs and consumer preference and uptake. In our view and based on overseas experience, many of these factors are unlikely to be influenced by a Designation and will require a sufficient amount of time to emerge.

Question 2: Do you agree that there are features of the interbank network that reducing or likely reducing competition and efficiency of the network or the system?

- 4.3 Whilst we agree that some of these features exist, there are now sufficient credible incentives for the banks to deliver the Minimum Requirements identified by the Commission. Please see paragraphs 3.5-3.7 above.

Question 3: Do you agree that there is conduct of participants of the interbank payment network that are reducing or likely reducing competition and efficiency of the network or the system?

- 4.4 Westpac believes that there are currently sufficient credible incentives to incentivise the change of behaviour amongst participants. Please see paragraphs 3.5-3.7 above.

Question 5: Do you agree with our characterisation of the nature of the interbank payment network? By 'nature' we mean the number, value, and nature of the transactions that the network currently processes or is likely to process in the future of the payments?

- 4.5 Please refer to paragraphs 3.9-3.13 above.

Question 7: Do you agree with our assessment of the potential interaction between the proposed designation and the FMI Act and CPD Bill?

- 4.6 Westpac is concerned with the potential regulatory overlap between the proposed Designation and the regulatory frameworks under both the FMI Act and CPD Bill. The proposed Designation is very broad covering "all bank payment instruments between Registered Banks or within a Registered Bank". We note that it is generally expected that the RBNZ will designate the Settlement Before Interchange (SBI) system as a systemically important financial markets infrastructure (FMI) under the Financial Market Infrastructures Act 2021 (FMI Act). Although the scope of that designation is not yet clear, given the broad scope of the Commission's Designation it is likely that both designations will overlap in terms of their scope, effectively making the Commission and the RBNZ dual regulators.
- 4.7 We are concerned that a dual regulator model could lead to confusion and potential inconsistency in approaches between regulators given that the RBNZ and the Commission have distinct but also

overlapping responsibilities. The RPSA's principal focus is on competition and efficiency and the FMI Act also has a focus on efficiency but importantly also focusses on financial stability. Both regimes also allow for the application of standards regarding access to the underlying payment system. Competition and efficiency can sometimes conflict with financial stability goals and therefore clarity is needed as to how the Commission will work with the RBNZ in regulating the network given the different policy objectives and potential overlapping powers.

- 4.8 As an example, the FMI Act provides for dual regulation of FMIs between the RBNZ and FMA apart from pure payment systems, which are solely the responsibility of the RBNZ. 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
- 4.9 A multiple regulator model would not align with international practice and experience from AML regulation where there are multiple regulators indicates this model can lead to inconsistent approaches. It also does not align with the approach recently outlined by the Minister of Commerce and Consumer Affairs to simplify the existing regulatory model for financial services by ensuring there is clear areas of responsibility and separation between regulatory agencies.
- 4.10 Similarly, we also see considerable scope for overlap between the Designation and the proposed CPD Bill. Although as noted above it is not clear to what extent the Commission intends to use its potential powers to develop a fully regulated open banking system on the basis proposed by the CPD Bill, it can be assumed that there would be at least some level of overlap. The Consultation Document states there is currently no regulatory overlap between the proposed Designation and the CPD Bill (presumably because Designation would be made without immediate regulation). As noted earlier, we believe that the high likelihood of regulation and associated costs and implications (such as regulatory overlap) should be considered in deciding whether to recommend a Designation. Accordingly, should the Commission proceed to recommend a Designation, we would urge the Commission to provide clarity as to how the two regimes would overlap, noting our concerns in this regard which we have outlined above.

Question 9: Do you agree with our definition of the proposed designation? If not, why not?

- 4.11 As we have mentioned in paragraphs 3.9 – 3.13 we have concerns with the proposed scope of the Designation being beyond the retail payment network. 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”.

Question 11: Do you agree new payment methods through API enabled payment ecosystems are becoming more prevalent overseas? And do you agree with how we have characterised the nature and benefits of these systems?

- 4.12 Whilst we agree that new payment methods underpinned by APIs are more prevalent overseas, as noted earlier the uptake of open banking in both the United Kingdom and Australia have been less than expected. It is also important to ensure that when comparing New Zealand with overseas jurisdictions that comparable jurisdictions are chosen for comparison. For example, New Zealand's very high card usage (similar to Australia), makes it less comparable to a country that is moving from a cash-based

payment system to open banking such as India, where new payment methods are not competing with established attractive payments options that offer various benefits to consumers.

Question 12: Do you agree there is significant unmet demand in New Zealand for innovative new payment methods enabled by a thriving API enabled payment ecosystem?

- 4.13 Please see paragraphs 3.12 and 3.13. Whilst there is evidence of some demand for alternative payment methods, we would caution against treating this as direct evidence of wider and significant unmet demand outside of the specific segments referred to. In particular, it is unclear whether alternative payment methods will be sufficiently innovative to be more attractive to consumers than existing card payment methods given the security and reward benefits that are attached to card payments. In this regard we refer to the Australian example referred to in paragraph 3.15 (c).

Question 14: Do you agree with our concerns regarding the timeliness, partnering, transparency, and reasonableness of fees of the API enabled ecosystem that uses any undesignated interbank payment network?

- 4.14 Please refer to paragraphs 3.5-3.7 above.

