



28 May 2024

Kimberley Foo
Payment Regulation and Engagement Manager, Market Regulation
Commerce Commission

Via email: PaymentsTeam@comcom.govt.nz

Dear Kimberley

Re: Designation of the interbank payment network – Banzpay submission

Banzpay Technology Limited (**Banzpay**) is a mature fintech providing innovative payment technology solutions to financial institutions across New Zealand and the Pacific Islands.

We are pleased to respond to the Commerce Commission's consultation on its proposal to recommend designation of the interbank payment network.

Banzpay supports the Commerce Commission recommending to the Minister that the interbank payment network be designated under the Retail Payment System Act 2022 (the Act).

Our assessment is such designation is appropriate and consistent with the purpose of the Act and within the Commerce Commission's functions and powers under the Act. Designation provides powerful incentives to force industry towards more rapid evolution of an API enabled ecosystem to support more competitive, innovative, and efficient open banking. Designation has the potential to bring forward significant unrealised benefit to consumers and businesses. Without a strong regulatory backstop in the form of designation, we risk a return to the slow and halting progress (aka hurry up and wait) that has characterised industry efforts to date.

The potential intersection of any designation made under the Act with any future designations made under the Financial Market Infrastructures Act and any future Customer and Product Data legislation will require careful management. However, in our view, concerns about potentially overlapping future regulatory frameworks should not override a recommendation to designate.

Our responses to the questions posed in the submission template are attached to this letter.

We would be happy to answer any questions the Commission might have on our response.

Yours sincerely,

Jonathan Lee
Chief Executive

Banzpay

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Submission Response Banzpay Technology Limited

Table A1 Full list of our submission questions

| Questions on our proposal to recommend the interbank payment network is designated | |
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| 1 | <p>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 merchants? If not, why not?</p> |
| <p>In principle, Banzpay agrees with the preliminary position outlined by the Commerce Commission (the Commission). It has become increasingly clear a strong regulatory backstop is required. Progress towards the payment ecosystem of the future has been sluggish at best. Despite the efforts of the API Centre, to date open banking has been beset by inconsistent progress, a lack of transparency and the absence of clear enforceable milestones. 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 can be made in a way that benefits consumers, merchants, and the wider economy.</p> | |
| 2 | <p>Do you agree that there are features of the interbank payment network that are reducing or likely reducing competition and efficiency of the network or the system?</p> |
| <p>We agree with the central proposition advanced by the Commission in relation to this question and we think the features negatively impacting competition and efficiency are well summarised in the consultation document. We wish to raise three additional points.</p> <ol style="list-style-type: none"> 1. For innovation to deliver significant change, whether through industry initiative or regulatory action, it needs to be accompanied by consumer and merchant trust in the safety of open banking and the interbank payment network it utilises. This is fundamental to new offerings being able to scale in the retail payment context. 2. While the consultation document covers many of the features that act to reduce the level of competition and efficiency, we think more attention should be given to the technology infrastructures, standards and systems which underpin the interbank payment network. In the end, these have the potential to place constraints on the type of new offerings that come to market and on the level of competition and efficiency between third parties and banks. 3. A lack of access to an ESAS account imposes a competitive disadvantage to any new entrant wishing to provide services leveraging the interbank payment network. We believe this constrains the breadth of new entrant offerings that can come to market. While ESAS is mentioned in the consultation document, the considerations around access are not specifically referenced. Our views about the competition issues associated with ESAS are contained in our submission dated 18 April 2024 on the Commission's draft market study into personal banking services and to a lesser extent in our submission dated 27 July 2023 to the Reserve Bank regarding their ESAS access review. | |
| 3 | <p>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?</p> |
| <p>Looking at the level of innovation in ways to make and receive payments in New Zealand, we conclude that some of the incumbents are reluctant to accommodate change because such change would result in increased competition from new entrants, especially where those new entrants are potential rivals for satisfying consumer and business demand for API enabled payment options and/or services. The conduct of participants manifests itself in the ways the Commission has outlined in the consultation document i.e. potential barriers to access and loss of investor confidence. While industry appears to be in a period of momentum towards an API enabled</p> | |

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| <p>ecosystem, there is a risk that momentum could quickly dissipate. A designation instrument would place a different set of incentives on participants by enhancing the credible threat of regulation because that designation would allow the Commission to exercise its regulatory powers where it is appropriate to do so.</p> |
| <p>4 Are there any other features of the interbank payment network or any conduct of participants that are relevant to our consideration to propose designation?</p> |
| <p>While greater regulatory support of the interbank payment network via designation is important, that network does not exist in isolation. New technologies and new forms of electronic money continue to emerge and there is an increasing need for payments, data, and digital identity to be closely integrated. If the Commission recommends designation, which is a move we support, how the Commission gives effect to that designation will need to have regard for future developments in matters like the digital cash proposals from the Reserve Bank, the roll out of the Digital Identity Trust Services Framework and data rights.</p> |
| <p>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.</p> |
| <p>The Commission's assessment of the number, value and nature of the transactions associated with the interbank network is clearly laid out in the consultation document. If industry, with regulatory support, is successful in delivering a thriving API enabled ecosystem we would expect innovative new ways to make and receive payments to emerge which offer consumers and businesses greater choice, convenience, and lower costs. Our expectation is these new ways to make and receive payments will see some current payment instruments evolve so they maintain their relevance to the modern digital economy and can be adapted to changing consumer and business need. Additionally, to the extent new forms of electronic money gain scale (such as stablecoins), the need for interoperability between different forms of money will help underpin the ongoing relevance of the interbank payment network.</p> |
| <p>6 Are there any other aspects of the nature of the network that are relevant to our consideration to propose designation?</p> |
| <p>In paragraph 3.10 of the consultation document the Commission notes it is interested in the payment aspects of open banking. We agree there are potential benefits from a thriving API enabled ecosystem which opens up competition in payments. While the interbank payment network is principally concerned with payments, it also is associated with data and in the future will be increasingly so. We would encourage the Commission to look beyond its immediate focus on open banking and payments and towards open finance more generally. Open finance has the potential to extend the benefits associated with open banking identified by the Commission to a much broader range of data driven financial interactions of importance to consumers and businesses.</p> |
| <p>7 Do you agree with our assessment of the potential interaction between the proposed designation and the FMI Act and CPD Bill?</p> |
| <p>We agree with the Commission's position the designation should be complementary to any designation issued under the FMI Act and any statutory scheme for data rights passed into law under future Customer and Product Data (CPD) legislation. The use of the conditional tense in our response is deliberate. At an operational level, the intersection between multiple designations will need to be carefully considered, as would the intersection between any designations and any future CPD legislation. If not well managed those intersections could result in a complex statutory framework for open banking, and the coexistence of multiple regulators, which is likely to favour larger market incumbents over new entrants.</p> |

On balance and given the API Centre has been operating for some time without being able to deliver the full benefits of an API enabled ecosystem, we believe the potential benefits from designation offset the impact of any potential inconsistencies that might arise from a designation under the FMI Act or inconsistencies with eventual CPD legislation. On the latter point, we note there is considerable uncertainty as to when that legislation might be enacted. A bill has not been introduced to the House and regulations would need to be passed before a banking sector designation could be made. In arriving at our assessment, we note the increase in pace towards an API enabled ecosystem that is currently evident. However, we remain of the view the current increase in pace could be fleeting absent designation.

8 Apart from the FMI Act and the Consumer Data Rights Bill, are there any other statutory considerations you consider relevant to our proposal to recommend designating the interbank payment network?

As mentioned in our response to question 4, the interbank payment network does not exist in isolation and before finalising a recommendation to designate, we suggest the Commission reconfirm the extent to which there may be points of intersection with the Digital Identity Services Trust Framework Act 2023, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Privacy Act 2020 that need to be explored.

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

There are several points we wish to raise about the proposed designation.

- 1) In 1(b) (ii) and (iii) the term 'membership rules' is used when referring to BECS participants and API Centre members. In the case of the API Centre, our understanding is that the reference should be to 'terms and conditions' rather than membership rules. In the case of BECS our understanding is that it would be preferable to refer to clearing system participants bound by those clearing system rules rather than to use the term membership rules.
- 2) In 1(b)(iii) it might be preferable to use the term Standards Users rather than API Centre Members to avoid the implication that Community Contributors who are not yet using the standards issued by the API Centre might fall within the designation.
- 3) It is not clear how the designation would relate to the work programme of the BECS management committee and the responsibilities and the voting arrangements for management committees set out in the Payments NZ Constitution. In practice a range of matters have been delegated to Payments NZ's management committees, including responsibility for the rules and standards relating to clearing systems.
- 4) It is also unclear how the designation would impact Payments NZ's infrastructure members. Those members have a voice at management committee meetings but do not have the ability to vote. Such members may have their own set of rules and standards. Some of those may not align with rules and standards issued by Payments NZ.
- 5) The designation does not mention the API Council (**the Council**), which is the governing body for the API Centre. While the Council is accountable to the Board of Payments NZ and the API Centre is not a separate legal entity, we query whether, for completeness, the designation should also refer to the Council.
- 6) Given the designation would continue in force for some time, we suggest the Commission consider to what extent the introduction of next generation infrastructure which supports real-time account to account payments in retail payment scenarios might change the scope of the proposed designation.

Additional optional questions

10 Do you agree New Zealand has not implemented a thriving API enabled payment ecosystem?

New Zealand has made important inroads in developing the architecture for a thriving API enabled payment ecosystem through the work of the API Centre. The work of the API Centre is predicated on a belief that long term competition and efficiency benefits will come through the continued development of industry-led open API standards. However, the 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.

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?

There is ample commentary in the financial literature on the inroads being made in open banking API enabled ecosystems around the world. However, we also note there is also commentary that open banking based on API enabled ecosystems remains a slow burn opportunity with the full suite of use cases yet to be explored.¹ While we agree with how the Commission has characterised the nature and benefits associated with these ecosystems, a singular focus on only developing new open banking payment methods will not be enough to deliver long term benefits to consumers and businesses in New Zealand. Whether consumers and businesses transition to new payment methods and realise the potential benefits will hinge on, among others:

- 1) The level of consumer education and consumer and merchant trust in open banking and whether that education and trust is sufficient to allow a network of open banking products and services to reach a critical mass.
- 2) The level of regulatory certainty that is delivered.
- 3) The security and fraud prevention associated with an API enabled ecosystem.
- 4) Whether the specific functionality delivered by open banking solutions offers greater utility than, for example, scheme-based products.

The need to ensure the potential of an API enabled ecosystem is fully realised reinforces the need for a close working relationship between industry and regulatory and policy agencies.

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?

We believe the Commission has properly demonstrated such unmet demand in the consultation document. Further, unless there was ample unmet demand it is unlikely Payments NZ would have sought an authorisation under the Commerce Act 1986 to further develop its framework for open banking and would have been prepared to commit the level of resources required to progress that framework if authorisation is granted. However, as noted in our response to question 11 whether that unmet demand can be satisfied hinges on more than just the delivery of new API enabled ways to make and receive payments.

¹ [open-banking-next-wave-of-use-cases.pdf \(bcg.com\)](https://www.bcg.com/open-banking-next-wave-of-use-cases.pdf)

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| 13 | Do you agree with our characterisation of the minimum requirements for a functional API enabled payment ecosystem? |
| <p>The Commission's views of the minimum requirements were clearly laid out in its open letter of 22 February 2024, and are also canvassed in the consultation document. We agree with the Commission's characterisation of these requirements. While the API Centre has done its best to show leadership, a combination of the features of the interbank payment network, the behaviour of API Providers, the API Centre's governance and funding arrangements and competition law settings have prevented these minimum requirements from being met. In our view those requirements are unlikely to be met in a timely manner without regulatory support.</p> | |
| 14 | Do you agree with our concerns regarding the timeliness, partnering, transparency, and reasonableness of fees of the API enabled ecosystem that use any undesignated interbank payment network? |
| <p>In general, Banzpay agrees with the concerns expressed by the Commission in relation to an API enabled ecosystem using an undesignated interbank payment network. While there are risks associated with designation, we are of the view designation offers net benefits in terms of matters like timeliness, partnering, transparency and reasonableness of fees.</p> | |
| 15 | Do you agree with how we've characterised the innovative new products and services for businesses within an API enabled ecosystem? And are there any other products and services for businesses you would like to draw our attention to? |
| <p>While we agree with the characterisation of the innovative new products and services set out in the consultation document, we would note that an API enabled ecosystem should progressively extend beyond payments to support a wider range of use cases. It is that continued expansion that will enable open banking to support consumer and business need across a range of different industries.</p> | |
| 16 | Do you have any other comments you would like to make? |
| <p>The primary focus of the consultation document is on how designation can support the transition to an API enabled ecosystem to deliver the benefits associated with open banking. We agree this is an important outcome for the Commission to converge on. A vibrant and innovative API enabled ecosystem would make a significant contribution to delivering the competition, innovation, and efficiency outcomes sought by the Commission. To make an enduring step change to New Zealand's financial sector, that ecosystem needs to continue to evolve and to push on from the important foundational work completed by the API Centre. For example, more than the four major banks need to become API Providers and digital identity and fraud protection need to be tightly integrated into this new ecosystem. Alongside developments such as these, other initiatives of significance relating to the interbank payment network also need to be addressed if we are to realise the payments ecosystem of the future. As signalled previously, Banzpay considers the access arrangements concerning ESAS need to be re-examined so new entrants to the open banking ecosystem wishing to provide a wider suite of products and services which leverage the interbank payment network are not put at a competitive disadvantage.</p> | |