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10 May 2024

Payments Team
Commerce Commission
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Dear Sir or Madam

**Bank of New Zealand's submission on the Commerce Commission's paper: "Retail Payment System - Consultation on our proposal to recommend designation of the interbank payment network"**

## 1. Introduction

1.1. Bank of New Zealand (BNZ) appreciates the opportunity to respond to the Commerce Commission's paper: Retail Payment System – Consultation on our proposal to recommend designation of the interbank payment network (**Consultation Paper**).

1.2. As the Commission is aware, BNZ is committed to Open Banking (BNZ prefers to use the term "Open Customer Data" as we believe this provides a more insightful description for customers – we will however refer to "Open Banking" in this submission to be consistent with the consultation) in New Zealand and is already active in this space. BNZ believes we have taken the lead on deploying the required APIs, having made both a payments initiation API and an account information API available for third parties to use. In doing so, BNZ has invested substantial resources over a long period and feels well positioned to respond to this consultation given our involvement and lessons learned to date.

1.3. Our key message is that the key to a robust, secure, and trusted open banking ecosystem is a well designed and implemented Consumer Data Right (**CDR**) regime. This requires regulatory intervention and MBIE published an Exposure Draft Consumer and Product Data Bill last year (**CPD Bill**). We submit that it is critical that this progresses, with the inclusion of our recommended enhancements to the CPD Bill.

1.4. We are also mindful of the need to avoid inefficient or contradictory regulation that might lead to inefficiencies, unnecessary costs, or redundant work. We consider that recommending the Minister designate the interbank payment network under the Retail Payments Systems Act 2022 (**RPS Act**) risks creating a parallel regulatory regime for Open Banking and we would urge some caution in pursuing this approach. Doing so could duplicate part of the scope of a CDR, as both regulations appear to have the same end goal of launching Open Banking in New Zealand. We submit that designation may not align well with the efficiency and long-term benefit purpose of the RPS Act, which aims "to promote … efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand". Our focus remains on supporting the finalisation of streamlined and efficient regulation that has already been quite extensively consulted upon.

1.5. We submit that the starting point for regulating Open Banking should be protecting customer's rights to their data, including by ensuring that it remains safe and secure. This is consistent with the foundational elements of the CDR regime. Without that focus, additional regulation could well stymie Open Banking in New Zealand, for example by increasing the risk of a security incident that erodes customer confidence in allowing data to be shared in the Open Banking ecosystem.

1.6. We have opted not to respond to all the questions in the consultation paper and instead have set out some high-level views about the proposed designation approach. Should the Commerce Commission have any questions in relation to this submission, please contact:

[redacted]
Paul Hay
Āpiha Matua: Waiture me te Tūtohu (Chief Regulatory & Compliance Officer)

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2. **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?**

2.1. It is unclear to BNZ whether this outcome will necessarily be achieved. An underlying premise in the consultation paper is that designation itself:

2.1.1. *will "likely incentivise quicker resolution of any issues as they arise and could reduce the incentives for issues to occur in the first instance*."

2.1.2. *"could provide greater certainty for banks and third party payment providers and importantly their investors to continue to move forward with the development of the API enabled payments ecosystem."*

2.2 BNZ questions whether the designation will achieve any of those goals. In fact, we consider designation may create more regulatory uncertainty for the following reasons:

2.2.1 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.

2.2.2 It is unclear how far the regulations would go but there are suggestions that they could reach into a broad area of the domestic payment system. In this regard, we note that only the Direct Credit payment instrument is used for Open Banking. Accordingly, it is not necessary for the scope of designation to cover other BECS payment instruments (such as Automatic Payments, Bill Payments, and Direct Debits).

2.2.3 The timeline on which the Commission might consider imposing any rules or standards after designation is not currently specified. There is instead a reference to the use of powers as a "*regulatory backstop of further intervention if a thriving and open system is not forthcoming*" in a "*timely way*".

2.2.4 The desired outcomes should be more clearly defined. For example, there is limited discussion of the desired outcomes for consumers. BNZ submits customer considerations are integral to Open Banking.

2.2.5 There is uncertainty as to how the proposal overlaps with other regulators in the same space. For example, the consultation paper acknowledges the "*technical regulatory overlap*" with the FMI Act but does not see this as an immediate issue as the designation itself does not create any regulation. It appears that the consideration of this issue is being deferred to a future date. In relation to overlap with the CDR regime, the Commission expects that any work completed in response to the designation would be "*expected to be adopted as a starting point*". BNZ's preference would be to see this stated as a commitment rather than an expectation. We would also note that MBIE is the agency empowered to put parameters on the form of CDR law, rather than the regulator.

2.3 Given we do not consider that designation will create any greater certainty for participants, we would question the statement that "*the risk of regulatory duplication with a CDR regime is outweighed by the need for increased certainty now*". Rather, we consider the risk of regulatory duplication is elevated and potentially problematic for participants.

2.4 Experience in other markets, notably Australia, suggests that regulatory uncertainty leads to a higher chance of redundant effort by those impacted. It has also lead to parties suspending work, until there is greater clarity.

2.5 As noted in BNZ's submission on the Commission's Request for Views Paper, the potential benefit BNZ could see from designation would be if the Commission were to use it to mandate the Payments NZ API implementation dates. This might increase certainty for participants and drive participation – something that is ultimately required to introduce the consumer benefits that are sought.

## 3 Advance Open Banking with CDR

3.2 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.

3.3 BNZ has consistently advocated that the CDR is the appropriate regulatory framework to advance Open Banking in New Zealand. At its core, CDR emphasises customer consent and control. This fosters trust and confidence to help encourage wide adoption of Open Banking. The Commission appears to share this perspective and has concerns about the timely implementation of CDR regulation. The implication is that designation of the interbank payment network would speed up implementation of aspects of a CDR regime and we submit this could be achieved through the CDR regime itself, that than separately via designation powers.

3.4 The aim of designating the interbank payment network to support a robust CDR regime understands the high likelihood of rework and duplication. In BNZ's view, the Consultation Paper may be overly optimistic about the ability for two separate regulations and regulators to deliver consistency between regulations that would overlap, but would not have the same purpose or scope of jurisdiction.

3.5 It also assumes that any standards or rules made under a designation under the Retail Payment Systems Act 2022 could be made at pace. This may be challenging:

3.5.1 After the current consultation closes, the Commerce Commission must take time to reflect on the response, prepare advice to the Minister, which will then potentially require Cabinet support - all before any designation could come into force via a Governor-General declaration.

3.5.2 If designation were to occur, even if within a few months, there could be a further period required for the Commission to evaluate whether it needs to use its regulatory backstop, which would be followed by further investigation of exactly how it might intervene. Drafting and consultation would then be required to progress any standards or rules to sit underneath designation in a way that ensures it does not compromise outcomes for customers.

3.6 In contrast, the CPD Bill would need to go through the Parliamentary process to pass and we understand there is a draft Bill being readied for introduction. If Open Banking is a priority, as we agree it should be, this could move swiftly and regulations drafted in parallel (similar to how the initial pricing standard was effected in tandem with the Retail Payment Systems Act). BNZ questions whether progressing the CPD Bill would be significantly slower that regulating under a designation.

3.7 While the CDR regime remains unclear, it may be challenging for the Commission to make informed decisions without risking conflict with MBIE (or with Parliament) especially given

the focus of the CDR regime is on customer outcomes. There is also a significant risk of duplicating technology investments, such as customer consent processes and the form of an accreditation regime.

3.8 We recommend government departments collaborate across boundaries to achieve shared goals under a single regulatory regime. This approach is consistent with the Council of Financial Regulators vision, and we see it as more effective than delivering parallel but separately developed regulations. The latter could lead to inefficiency and confusion. It is integral to the success of Open Banking that it proceeds without regulatory overlap, with certainty, and with Government direction to support this aim.

## 4 Trust and security are paramount in delivering an Open Banking ecosystem

4.2 The risk of the proposed designation potentially disrupting the stability of the payment system by eliminating critical protections should be carefully considered.[1] These include limits on payments, the ability to halt or stop transactions in real time, and the authority of banks to act against malicious actors or criminals. 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.

4.3 In the UK and Australia, the key to Open Banking success has been building customer trust. We should look to those examples and ensure the same. Trust is the bedrock upon which the whole system rests. We believe that a poorly constructed 'component' part of the CDR that focuses only on the connectivity could result in poorly executed connectivity that confuses customers, creates uncertainty, and issues that may impede the adoption of Open Banking.

## 5 Opposing reverse engineering, screen scraping, and other similar models

5.2 We would ask the Commission to consider removing the use of words such as "sub-optimal methods". This appears to under-state something that we believe to be a key issue and might be inferring tacit approval of business practices that bypass important security measures that are aimed at protecting customers from fraud and losses.

5.3 We submit the Commission should make it clear it does not support business models that might bypass security practices such as requiring consumers to disclose confidential log-on and password information to third-parties. Reverse engineering, screen scraping, and other similar models are forms of access that might compromise consumer protection.

[1] 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.