

# Westpac New Zealand Limited

Submission to the Commerce Commission on Payment  
Between Bank Accounts

*Request for views on payments made over the interbank  
network*

21 September 2023



# 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 Commission's review of the Retail Payment System – *Request for views on payments made over the interbank payment network* ("**Consultation Paper**"). Thank you for the opportunity to provide feedback on the Consultation Paper.
- 1.2 Westpac's contact for this submission will be provided separately. There is no confidential information in this submission, and it can be published in full on the Commission's website.

# 2 SUMMARY

- 2.1 Westpac supports and is committed to the introduction of open banking initiatives to enhance customer outcomes and believes that open banking represents a significant opportunity to offer value to customers through an integrated data ecosystem. In this regard, Westpac is committed to meeting the industry implementation plan agreed by Payments NZ ("**Industry Implementation Plan**") and has within the last six months, mobilised resources and funding to progress the delivery of the PNZ APIs ("**PNZ APIs**"). Westpac believes that the delivery of the PNZ APIs (alongside the Consumer Data Right ("**CDR**") regime), will be an important first step in promoting innovation in the retail payment system.
- 2.2 Whilst the PNZ APIs will form the technical foundations on which innovation can be built, Westpac believes that the true innovative potential of open banking can only be delivered if seamless customer experiences are delivered through the alignment and delivery complementary initiatives.
- 2.3 Westpac's submission focuses on the following key themes which are aimed at ensuring that any intervention will deliver net benefits and not result in unintended consequences such as inefficiency through duplication of cost, compliance and confusion for participants and consumers:
  - (a) **Westpac supports targeted and balanced intervention:** Westpac acknowledges that to date there has been a lack of progress made with respect to the delivery of the PNZ APIs. As noted above, Westpac has within the last six months, mobilised resources and funding to progress the development and delivery of the PNZ APIs. Therefore, Westpac believes that any regulatory intervention must be cognisant of any recent progress made and be targeted at, and proportionate to, the nature and extent of the problem that is identified.
  - (b) **The importance of complementary factors:** A holistic view of a broader set of complementary factors which underpin the wider open banking framework is essential to ensuring that long term objectives of open banking and any regulatory initiatives are achieved and unintended consequences are minimised or avoided.

- (c) **Alignment with industry and regulatory initiatives:** Any regulation must be cognisant of, and align with the CDR, Payments NZ and FMI workstreams to create an effective and efficient regulatory landscape which promotes innovation.
- 2.4 Westpac also takes this opportunity to submit on more technical aspects of the proposed designation, such as the definition of the "retail payment network" and "network operator" at Appendix 1.

### 3 KEY SUBMISSIONS

#### Westpac supports targeted and balanced regulation

- 3.1 Westpac acknowledges that to date there has been a lack of progress made with respect to the delivery of the PNZ APIs. We note that, Westpac has within the last six months, mobilised resources and funding to progress the development and delivery of the PNZ APIs. Therefore, Westpac believes that any regulatory intervention must be cognisant of any recent progress made and be targeted at, and proportionate to, the nature and extent of the problem that is identified. This would ensure that net competition and efficiency benefits are delivered through regulation, while minimising or avoiding any unintended consequences such as duplication of cost compliance and confusion for participants and consumers.
- 3.2 Westpac considers that targeted and proportionate regulatory intervention relies on a clearly defined problem. In this regard, we interpret section 12 of the Retail Payment System Act 2022 ("**RPS Act**") as the appropriate vehicle for defining and identifying the competition issue which should be the subject of regulation under the RPS Act.
- 3.3 Under section 12 of the RPS Act, when determining whether to make a recommendation (that a retail payment network be designated) to the Minister, the Commission is required to take into account "*any features of the retail payment network, or any conduct of participants in the network, that reduce, or are likely to reduce, competition or efficiency*". We interpret this to mean that the Commission must consider the features of the *interbank network* that give rise to competition issues and *not another* retail payment network or *between other* retail payment networks (such as EFTPOS and the Visa and Mastercard debit networks referred to in the Consultation Paper).
- 3.4 With respect to competition and efficiency issues in the *interbank network*, the Consultation Paper refers to "sub-optimal network access" approaches that are increasing risk to consumers which, "*represents an opportunity to promote competition and efficiency in the retail payment system*". In this regard, one of the Commission's stated core concerns is the lack of certainty that the Industry Implementation Plan will be adhered to by banks.
- 3.5 In light of the above and as a starting point, Westpac would encourage the Commission to engage with Westpac (and other banks) to gain a better understanding of the current and expected progress towards the Industry Implementation Plan to identify the nature and extent of any problem that may exist.

- 3.6 Furthermore, should a problem be identified by the Commission, we would encourage the Commission to consider whether there are other less onerous and more targeted and proportionate solutions available to incentivise and monitor progress, as an alternative to designation under the RPS Act. For example, under the old Part 4 of the Commerce Act 1986 thresholds regime, the Commission has previously entered administrative settlements as a less intrusive alternative to imposing regulatory control (even in the absence of a specific statutory power to enter such settlements). Westpac would welcome further engagement with the Commission to explore alternative solutions to the issues identified by the Commission.
- 3.7 Additionally, in paragraph 3.10 below we have outlined why Westpac considers that optimal network access through the delivery of the PNZ APIs may not address the Commission's consumer protection risks alone. Complementary initiatives such as a digital identification framework, standard accreditation criteria and appropriate allocation of liability amongst participants are essential in promoting safe, secure and trusted network access which would drive innovation and consumer uptake. Westpac believes that this is also relevant to determining the appropriate level of intervention to be applied by the Commission.

### **The importance of complementary factors alongside PNZ APIs**

- 3.8 Standardised open APIs are not the only prerequisite for delivering a safe and ubiquitous system that promotes innovation and encourages participation. Accordingly, any consideration of regulatory intervention requires a holistic system-wide view of all enabling elements. It must align with and take into account a broader complementary set of initiatives which underpin the wider open banking framework to ensure objectives are achieved and unintended consequences are minimised.
- 3.9 Westpac considers that, in addition to the delivery of the PNZ APIs, the following factors are essential to creating an environment which promotes the seamless delivery of innovative products and services for the benefit of consumers:
- (a) **Digital identification system:** The foundation of an optimised open data system must be a centrally administered digital identity system. This technology is fundamental to ensuring that the potential of open data can be leveraged in a safe, efficient and scalable manner that enables customer data to be kept secure. In addition, implementing digital identification technology ensures that on-boarding processes for customers are efficient, making it easier for customers to access different banking service providers in a seamless manner. It therefore has the potential to drive forward the uptake of open banking across the sector, by making it far easier for customers to prove their identity and link numerous accounts across different providers to one unique identifier.
  - (b) **Standard accreditation criteria:** Standard accreditation criteria will be needed to allow efficient and safe access to the interbank payment network. Whilst the development of PNZ APIs is the starting point to enable innovative payment options, they will need to be supported by a robust framework that allows for efficient partnering between banks and payment service providers. The collective development by Payments NZ of partnering and accreditation standards and fair and reasonable access terms are steps that are being taken by industry to promote an efficient partnering process. Westpac considers

that one way that the Commission could assist this initiative would be by granting a clearance for the banks to work together collaboratively to agree a standardised partnering framework that aligns with the intent of the CDR regime.

- (c) **Consumer protection is essential to the success of open banking:** Consumer protection relies on the appropriate allocation of liability between participants so that the participant that is best placed to manage and resolve the risk is responsible for doing so. In the absence of such clarity, weakness will be created in the system, which can cause detriment to customers, impair trust and confidence, and ultimately reduce uptake and participation in the system. In addition, rigorous security standards, consent frameworks and data safeguards are essential for regimes mandating access to customer and consumer data, such as the CDR regime and any proposed regulation.
- (d) **AML:** While it is recognised that this is not within the Commission's jurisdiction to regulate, there are other regulatory settings that must operate effectively for APIs to work well. For example, consideration should be given to ensuring that the use of APIs does not generate overlapping obligations under the Anti-Money Laundering ("AML") and Countering Financing of Terrorism Act 2009 ("**AML/CFT Act**"). This is particularly relevant from the perspective of ongoing transaction monitoring, the wire transfer obligations, prescribed transaction reporting and potentially also suspicious activity reporting. In our experience, the need for a provider to comply with the AML regime, and the attendant inquiries and documentation required from customers, can operate as a disincentive for customers to make use of new technologies.
- (e) **Ubiquity and consumer trust:** Given New Zealand's relative size and scale, fragmentation of the payments landscape and customer experience may undermine consumer trust and confidence in the ecosystem. Further, if there is not sufficient ubiquity and consistency in the market to drive significant (scale) adoption of new payment options, then some initiatives will inevitably fail. Westpac's concern is that smaller markets like New Zealand (contrasted with the examples of the United Kingdom, India and Brazil referred to in the Consultation Paper), with less consumer scale, are less likely to be able to sustain fragmentation (meaning failed ventures are potentially more likely). While Westpac accepts that the Commission's primary objective is to ensure that entry conditions permit and stimulate new products and services coming to market, in the context of retail payments, consumer trust in the system must also be prioritised in any regulatory design.

### **Alignment of regulatory and industry initiatives**

- 3.10 Westpac recognises that the Commission has signalled a co-ordinated approach with the Reserve Bank of New Zealand ("**RBNZ**"), the Ministry of Business, Innovation and Employment and Payments NZ. Westpac appreciates that there are currently a number of unknowns in this regard. Westpac considers that additional detailed clarity in terms of how this approach would work in practice is essential to minimising uncertainty that may inadvertently hinder progress towards increased competition and efficiency in the retail payment system.

- 3.11 In this regard, we note that improving regulatory alignment by considering the role of each of the regulators and actively reducing any existing overlap in their roles and responsibilities in the retail payments system would lead to a more effective and efficient regulatory landscape. These increased efficiencies would ultimately lead to greater innovation and competition and efficiency in the retail payments system.
- 3.12 Additionally, Westpac believes that there would be merit in developing a longer-term regulatory roadmap which outlines the timing, sequencing and co-ordination of regulatory change. This would enable the strategic development of regulatory change in a way that allows banks to maximise investment in an efficient manner which would lead to enhanced regulatory and consumer outcomes.

## Appendix 1

### Technical Considerations

1. Westpac also takes this opportunity to comment on the technical considerations raised in the Consultation Paper.

#### Definition of "retail payment network"

2. In the Consultation Paper, the Commission defines the interbank payment network as:

The retail payment network that bank transfers are initiated on by the consumer or merchant by sending payment instructions directly to the consumer's bank. Bank transfers include automatic payments, direct credits, bill payments and direct debits

3. A retail payment network is defined as:

the participants, arrangements, contracts, and rules that facilitate a class of retail payment

4. While we agree that the definition of retail payment network is very broad, there is no clearly defined interbank payment network in practice. This is in contrast to the Visa and Mastercard schemes that are readily identifiable. The Commission's identified "network" is a construct of contracts and systems. Therefore, extreme care needs to be taken when the network is identified to avoid the unintended consequences that may arise from an overly broad application of the definition.
5. We also note that the proposed network definition captures the Bulk Electronic Clearing System ("**BECS**") and Settlement Before Interchange ("**SBI**") system. The BECS and SBI system govern both retail and non-retail payments. There is a significant risk of increased costs of regulation if the designated network overlaps with the work of the RBNZ under the Financial Markets Infrastructure Act 2021.
6. In addition, it is not clear how designating and regulating the BECS and SBI system is intended to contribute to the efficient delivery of the APIs, with the eventual aim of opening up the system to new participants. We seek further clarity from the Commission on this issue.
7. We note that any change to back-end infrastructure of the payment system (such as the BECS and SBI system), will be a significant undertaking which will be time consuming and incur significant costs. Therefore, careful consideration must be given to how the designation of such infrastructure will contribute to the Commission's objectives through a robust cost-benefit analysis.

#### Definition of "network operator"

8. In its Consultation Paper, the Commission identifies that:

the BECS participants (primarily banks) could also be considered a network operator of the interbank payment network, or at the least they are network participants. The banks operate or manage core infrastructure of the interbank payment network. This includes the Settlement Before Interchange (SBI) system which is used to settle payments and exchange payment information multiple times throughout each business day.

9. Again, we consider that the Commission should take extreme care when defining the network operators and participants, as well as their responsibilities, to avoid unintended consequences. For example, banks use the SBI system in order to provide their services but do not have responsibility for managing or operating it. By analogy, terminal providers, switches and banks use the Mastercard credit network to provide their services, but they do not have responsibility for managing or operating it.
10. Banks operate and manage their own systems that connect to the SBI system, and so do not operate or manage core infrastructure of the SBI system. The core underlying infrastructure of the SBI system is the RBNZ's Exchange Settlement Account System ("**ESAS**"). If a bank ceased to exist, the absence of its systems would not cause the SBI system as a whole to be incapable of operating. Other SBI participants would still be able to use the system without that bank. As such, our view is that banks do not operate the core infrastructure of the interbank payment network and therefore it would be inappropriate for them to be deemed network operators.



