



Payments NZ authorisation

Submission from Akahu

26 February 2024

1. Overview

Akahu does not support the authorisation application.

If the authorisation application was approved, we expect that third parties would continue to struggle to access standardised APIs. The two key reasons are:

1. The authorisation application scope does not include pricing. Each third party would still need to negotiate a bilateral contract with each bank in order to access standardised APIs. This would leave banks with full control. They would retain their current ability to block access to third parties and use cases that they do not wish to support.
2. We've been told by two banks that they don't currently want to contract with third parties using their current bilateral templates, because they expect those templates to change as a result of the authorisation application and follow-on workstreams. We think there's a material risk that this authorisation application would make it harder for third parties to access standardised APIs in the near term.

2. Conflicted forum for facilitating rules

Ownership and funding

A key purpose of open banking regulation is to promote competition and innovation. Given that purpose, we think it's untenable for an organisation which is owned and funded by the incumbent banks to be controlling the development of open banking rules.

The track record supports this view - since the bank-led work began in 2017, the delivery of APIs, and ability for third parties to access those APIs, has been extremely limited. As a result, third parties and New Zealand consumers continue to be limited to suboptimal connectivity methods.

Power imbalance

The API Centre is not a suitable forum to facilitate the agreement of standard terms for the following reasons:

1. The inherent conflicts described above create a significant risk that bank interests are over-weighted during the development of standardised terms. This risk is further heightened because banks have considerable resources available to contribute to API Centre forums, whereas most third party organisations have more limited resources available. If standardised terms developed through API Centre end up being adopted in consumer data right regulation, or other open banking-related regulation, this bank over-influence would persist.

2. It's difficult for third parties to advocate strongly in API Centre forums. Each third party knows that it will need to negotiate bilateral contracts with each bank. The bank representatives responsible for bilateral contracts are often the same people that participate in API Centre forums. So if a third party advocates strongly on points that are not aligned with bank interests, it jeopardises the ability for that third party to negotiate a bilateral contract with each bank. A high level of bank coverage is critical for almost all third party products. So even if a single bank decides to block access to a third party, that could have the effect of making the third party product unviable.

Insufficient justification for excluding pricing

The second issue in the section above would have been avoided if the authorisation application included pricing. If pricing was included, API Centre would have been able to facilitate centralised accreditation, which would avoid the need for a third party to negotiate bilateral contracts with each bank.

Pricing is a known barrier in the market right now. For example, some pricing being offered for payment APIs is higher than merchant service fees for card scheme payments. We think the reason for not including pricing in the scope of the authorisation application was so that banks retain full control of access to open banking APIs via bilateral contracts.

3. Standard terms might not be viable

If the authorisation application is approved, the API Centre's process to try to agree on standard terms will be lengthy and uncertain for the following reasons:

1. It would take significant time for the API Centre to facilitate the process of developing standard terms. This process would require multiple layers of approvals, including approval from the API Centre Council and Payments NZ's board (which has ultimate control of the API Centre and decides whether to approve or reject any major API Centre decision).
2. There is no certainty that banks and third parties would reach agreement on standard terms.
3. Even if standard terms are agreed, there is no certainty that they would be economically viable for third parties. This risk is significant due to the conflicts described in the section above.

4. Authorisation may prevent bilaterals

We're concerned that if this authorisation application was approved, banks may be less likely to approve third party access to APIs via bilateral contracts in the near term.

This concern arises from our direct experience in attempting to negotiate bilateral contracts in advance of the 30 May 2024 release date from New Zealand's four largest banks.

In two instances, we've been told that the bank does not want to contract with third parties using their existing bilateral templates, because they expect significant changes to their terms through the process that will take place if the authorisation application is approved. So we've been asked to wait until revisions are available to those bilateral templates.

5. Final words

Since 2017, we've been told by New Zealand banks that there is no need for open banking regulation because the industry is committed to delivering it themselves. Given that very limited progress has been made over the last seven years, we think that the banking sector has lost the right to continue its attempts at self-regulation.

In our view, approval of the authorisation application is unlikely to deliver a positive net effect,, and may even have a negative effect in the near term.