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Submission to Commerce Commission Payments Between Bank Accounts

The Commerce Commission should not designate the interbank payment network for the purposes of enabling third parties to initiate payments.

I agree with the Commission that industry has, and will continue to, work too slowly in this area without some kind of regulatory intervention. However, the Commission's proposed solution will not achieve the desired outcomes.

It is unclear why the Commission believes designation and regulation of the New Zealand interbank network is the appropriate route to achieve this. As the paper notes, this is in contrast to the approach taken in other jurisdictions, yet there is no evidence or rationale provided to support the Commission's decision.

Given the extensive work done to introduce open banking overseas, with the UK and Australia being notable examples, New Zealand should borrow heavily from these frameworks instead of regulating the underpinning payment network. Indeed, the Commission should rely upon the myriad resources published by regulators abroad in its considerations (see Appendix A for a list of pertinent resources).

Accordingly, the Commission should leave the responsibility of implementing open banking wholly to MBIE. In its recent consultation, MBIE proposed that it would develop New Zealand's Consumer Data Right (CDR) and its Chief Executive would be responsible for the technical standards (sections 87-89 and section 29 of the draft bill).

In the absence of a publicly administered rules framework (which the CDR would introduce) several risks arise if only technical API standards are enforced. These include privacy, security, liability, dispute resolution, and accreditation. Consequently, it is unwise for the Commission to go down that route.

If the Commission decides to designate and subsequently regulate the interbank payment network consultation on the issues would take a long time to do properly. Therefore, the argument that this approach would "provide access to the necessary systems ahead of the CDR going live" which would... "reduce the risk of delays in the CDR implementation due to the banking sector not being ready" is unfounded.

If, however, the Commission were to achieve this there is the risk that the Commission's API regulations would be in conflict with the standards MBIE would subsequently set. Either way, it would be inefficient.

Furthermore, it is unclear whether the Commission would seek to regulate account information APIs along with payment initiation APIs, or whether it even has the power to do so. If it were to regulate only the latter, it is possible that the quality of the two types of APIs would diverge, which would again introduce inefficiencies once the CDR becomes live.

It is not clear what the Commission means by 'access'. In the open banking context, there are two types of access: 'read access' to customer account information; and 'write access' to initiate payments on behalf of the customer. In regard to the latter, a third party gives the customer's bank instructions to make a payment. This is in contrast to access in a payment system, which involves a bank or other entity to be a participant (direct or indirect) of the infrastructure, often requiring clearing and/or settlement of obligations.

The paper does not describe if, how and for what reasons interbank payment networks (excluding cards) are regulated overseas. Indeed, the RBA does not regulate any such networks; it did undertake a consultation on access to the Australian fast payments system (NPP) in 2018, but decided against regulation. The UK does regulate Bacs and FPS. However this is for the purposes of financial institutions having access, direct or indirect, to making payments through these systems, not payment initiation by a non-bank.

The Commission should instead devote its resources to:

- Undertaking a full review of the entire retail payments system, including strategic elements, borrowing from the RBA's 2019-2021 Review and the 2010-2012 Strategic Review of Innovation.
- Direct/encourage industry to coordinate to build a fast payment system in collaboration with the RBNZ (letter to Payments NZ 10 July 2023).

Appendix A

Resource

RBNZ ESAS consultation

Link

<https://www.rbnz.govt.nz/have-your-say/2023/esas>

RBA access NPP consultation

<https://www.rba.gov.au/payments-and-infrastructure/new-payments-platform/functionality->

Malcolm speech, discusses coordination problem

<https://www.rba.gov.au/speeches/2012/sp-ag-300312.html>

CDR bill

<https://www.mbie.govt.nz/have-your-say/seeking-feedback-on-the-customer-and-product->

Payments NZ Minimum Open Banking Implementation Plan

<https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-bankin>

RBA data

<https://www.rba.gov.au/payments-and-infrastructure/resources/payments-data.html>

CGAP publication, authentication / authorisation

<https://www.findevgateway.org/paper/2023/04/starting-transaction-payment-initiation-and->

COFR Vision Statement

<https://www.cofr.govt.nz/news-and-publications/payments-vision.html>

Karen Silk speech at The Point

<https://www.rbnz.govt.nz/-/media/2dee7ac2f2724b60bbd74568894b4410.ashx>

Consumer Payments Survey, 2022

<https://www.rba.gov.au/publications/bulletin/2023/jun/consumer-payment-behaviour-in-au>

PSB Annual report: 3. Payments System Regulation and Policy Issues

<https://www.rba.gov.au/publications/annual-reports/psb/2022/pdf/payments-system-regule>

Phil Lowe speech, "An Efficient, Competitive and Safe Payments System"

<https://www.rba.gov.au/speeches/2022/sp-gov-2022-12-14.html>

Ellis Connolly speech, "The Shift to Electronic Payments – Some Policy Issues"

<https://www.rba.gov.au/speeches/2023/pdf/sp-so-2023-03-28.pdf>

Ellis Connolly speech, "Real-time Payments in Australia"

<https://www.rba.gov.au/speeches/2022/sp-so-2022-05-03.html>

The Cost of Card Payments for Merchants

<https://www.rba.gov.au/publications/bulletin/2022/sep/the-cost-of-card-payments-for-merc>

RBA Strategic Priorities	https://www.rba.gov.au/payments-and-infrastructure/strategic-priorities.html
New Payments Platform Functionality and Access: Consultation	https://www.rba.gov.au/payments-and-infrastructure/new-payments-platform/functionality-
Strategic Review of Innovation	https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/past-rec
Strategic Review of Innovation - Issues Paper	https://www.rba.gov.au/publications/consultations/201106-strategic-review-innovation/issu
Strategic Review of Innovation Summary of Consultation	https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/past-rec
Strategic Review of Innovation Conclusions	https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/past-rec
APCA submission to Conclusions	https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/past-rec
RBA Core Criteria for a 'Fast Payments' Solution	https://www.rba.gov.au/payments-and-infrastructure/payments-system-regulation/past-rec
Industry Proposal for a Fast Payments Solution – RBA media release	https://www.rba.gov.au/media-releases/2013/mr-13-03.html
Industry Proposal for a Fast Payments Solution – APCA response	https://www.auspaynet.com.au/sites/default/files/2018-07/real-time-payments-proposal.pdf
Australia CDR rules	https://www.legislation.gov.au/Details/F2021C00076
Australia CDR legisltiaon (competition and consumer act)	https://www.legislation.gov.au/Details/C2021C00151
Australia CDR overview	https://treasury.gov.au/policy-topics/economy/consumer-data-right
CDR roll out history	https://www.cdr.gov.au/rollout
UK CMA Retail banking market investigation (full list of publications, from 2014 to now)	https://www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesse
CMA Retail Banking Market Investigation Order 2017	https://assets.publishing.service.gov.uk/media/5893063bed915d06e1000000/retail-bankir

Open Banking Ltd (OBIE) Independent review led by Alison White	https://www.gov.uk/government/publications/open-banking-limited-independent-investigati
Open Banking Lessons Learned – ToR Independent review led by Kristin Baker	https://www.gov.uk/government/publications/open-banking-lessons-learned-review-terms-
Open Banking Lessons Learned – findings Independent review led by Kristin Baker	https://www.gov.uk/government/publications/open-banking-lessons-learned-review-report
UK regulators (Joint Regulatory Oversight Committee, JROC) joint statement on future of open banking	https://www.gov.uk/government/publications/joint-statement-by-hm-treasury-the-cma-the-
UK JROC Terms of Reference	https://www.fca.org.uk/publication/corporate/joint-regulatory-oversight-committee-tor.pdf
FCA open finance – call for input, feedback statement, advisory group, 2019/20 business plan	https://www.fca.org.uk/publications/calls-input/call-input-open-finance
PSD2 legislation	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L2366
PSD2 FAQs	https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5793
PSD2 RTS fact sheet (EC)	https://ec.europa.eu/commission/presscorner/detail/en/MEMO_17_4961
PSD2 summary (EBA)	https://www.ecb.europa.eu/paym/intro/mip-online/2018/html/1803_revisedpsd.en.html
RTS (PSD2) legislation	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:069:FULL&from=EN
Amendment to RTS (PSD2)	https://ec.europa.eu/finance/docs/level-2-measures/psd2-rts-2022-5517_en.pdf
Draft report by EBA on amending RTS (PSD2)	https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/D
Communication to Parliament, ECB, etc: Retail payments strategy	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0592&qid=166
Opinion of EBA on its technical advice on the review of PSD2	https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/O
Report for Parliament, ECB, etc: Review of PSD2	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023DC0365&qid=166

Impact Assessment Report: Proposal to repeal PSD2	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023SC0231&qid=169
Open Banking Final Report Independent review led by Scott Farrell	https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking- For-web-1.
Inquiry into Future Directions for the CDR, independent inquiry by Scott Farrell	https://treasury.gov.au/sites/default/files/2020-12/cdrinquiry-accessiblefinal.pdf
Exposure Draft Bill to enable action initiation in CDR, consultation by Treasury	https://treasury.gov.au/consultation/c2022-317468
Treasury Laws Amendment (Consumer Data Right) Bill 2022	https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislatio
Statutory Review of the Consumer Data Right Report, led by Elizabeth Kelly	https://treasury.gov.au/sites/default/files/2022-09/p2022-314513-report.pdf
Strategic Working Group (SWG) for open banking	https://www.openbanking.org.uk/swg/
The Future Development of Open Banking in the UK, SWG Final Report	https://www.openbanking.org.uk/wp-content/uploads/SWG-Report-The-Future-Developm
Smart Data Working Group, Spring Report	https://www.gov.uk/government/publications/smart-data-working-group-spring-2021-repor
Smart Data Working Group	https://www.gov.uk/government/groups/smart-data-working-group
Seizing the moment: Why time is of the essence for Smart Data legislation	https://www.openbanking.org.uk/insights/seizing-the-moment-why-time-is-of-the-essence-
Smart Data Working Group, reports on consent, liability and authentication	https://www.gov.uk/government/publications/smart-data-research-on-consent-liability-and-
Smart Data Working Group, reports on accreditation and customer experience	https://www.gov.uk/government/publications/smart-data-accreditation-and-customer-expe
Data Protection and Digital Information (No. 2) Bill	https://bills.parliament.uk/bills/3430
Data Protection and Digital Information Bill – Research Briefing	https://researchbriefings.files.parliament.uk/documents/CBP-9606/CBP-9606.pdf
Payment Services Regulations 2017 (PSRs)	https://www.legislation.gov.uk/uksi/2017/752/pdfs/uksi_20170752_en.pdf

UK open banking regulatory info	https://www.openbanking.org.uk/regulatory/
NPP Roadmap	https://nppa.com.au/wp-content/uploads/2022/11/NPP-October-2022-Roadmap.pdf
Australian Payments Plus submission to Draft Bill consultation by Treasury	https://treasury.gov.au/sites/default/files/2023-02/c2022-317468-australian_payments_plu
How Open Banking is evolving: Australia & UK comparison	https://news.nab.com.au/news/how-open-banking-is-evolving-australia-uk-comparison/
Lessons Learned from Australia and the UK: The CDR and Open Banking	https://news.nab.com.au/wp-content/uploads/2023/02/NAB-and-NatWest-Open-Banking-1
Open Banking: Payment initiation - completing the vision	https://www.deloitte.com/content/dam/assets-zone1/au/en/docs/industries/financial-servic
Consultation – NPP Functionality and Access: Conclusions Paper	https://www.rba.gov.au/payments-and-infrastructure/new-payments-platform/functionality-
Payments System Review, led by Scott Farrell	https://treasury.gov.au/review/review-australian-payments-system
RBA Submission to Treasury's Payment System Review	https://www.rba.gov.au/publications/submissions/payments-system/submission-to-payme
A Strategic Plan for Australia's Payments System	https://treasury.gov.au/publication/p2023-404960
Open Banking around the world: Towards a cross-industry data sharing ecosystem	https://www.deloitte.com/global/en/Industries/financial-services/perspectives/open-bankin
Europe Open Banking Market and Trends 2023	https://www.businesswire.com/news/home/20230303005172/en/Europe-Open-Banking-M
Open banking around the world	https://truelayer.com/reports/open-banking-guide/open-banking-around-the-world/
ComCom Work Programme	https://comcom.govt.nz/_data/assets/pdf_file/0017/310445/Retail-Payment-System-Wor
ComCom Initial Market Monitoring	https://comcom.govt.nz/_data/assets/pdf_file/0026/295802/Notification-of-initial-monitori
ComCom Our role under the Act	https://comcom.govt.nz/_data/assets/pdf_file/0030/314868/Retail-Payment-System-Our-

Regulations Review	https://www.parliament.nz/en/pb/sc/scl/regulations-review/
RPS Act	https://www.legislation.govt.nz/act/public/2022/0021/latest/whole.html
Costs Study	https://www.rba.gov.au/publications/rdp/2014/2014-14/introduction.html
How to enrol in Open Banking Directory (OBD) - Guide	https://www.openbanking.org.uk/wp-content/uploads/Enrolling-Onto-Open-Banking-Guide
The Open Banking Standard - recommendations	https://theodi.org/wp-content/uploads/2020/03/298569302-The-Open-Banking-Standard-1
BNZ APIs	https://www.bnz.co.nz/about-us/open-banking/bnz-apis
Final Report - Advisory Committee on Open Banking, Canada	https://www.canada.ca/en/department-finance/programs/consultations/2021/final-report-a
Report on open banking and application programming interfaces	https://www.bis.org/bcbs/publ/d486.pdf
Access to payment systems	https://www.psr.org.uk/our-work/access-to-payment-systems/
Access and Governance Report on Interbank Payment Systems January 2022	https://www.psr.org.uk/publications/policy-statements/access-and-governance-report-on-i