

**COMMERCE ACT 1986: APPLICATION FOR AUTHORISATION
OF RESTRICTIVE TRADE PRACTICES**

7 December 2023

The Registrar
Competition Branch
Commerce Commission
PO Box 2351
WELLINGTON
registrar@comcom.govt.nz

Pursuant to section 58 of the Commerce Act 1986, notice is hereby given seeking authorisation of a restrictive trade practice.

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INTRODUCTION AND EXECUTIVE SUMMARY

1. This is an application under sections 58(1), (2), (6B), and (6D) of the Commerce Act 1986 for authorisation to enter into, and give effect to, a contract, arrangement, or understanding:¹
 - (a) to which the applicant considers section 27 might apply; and
 - (b) that contains provisions that are or might be cartel provisions.
2. The applicant is Payments NZ Limited (**Payments NZ**). Payments NZ and the following entities will be entering into, and giving effect to, the arrangement:
 - (a) **API Providers** (current and future), being financial institutions that issue bank accounts to customers (using Payments NZ's standard for bank account formats), want to use standardised Application Programming Interfaces (**APIs**) developed using Payments NZ's API Standards to provide services to Third Parties, and are registered as an API Provider with Payments NZ; and
 - (b) **Third Parties** (current and future), being entities that want to use standardised APIs developed using Payments NZ's API Standards provided by registered API Providers and are registered as a Third Party with Payments NZ.
3. Payments NZ is a governance body at the heart of Aotearoa New Zealand's payment system. Its constitutional objectives are to govern and manage payment system rules and standards as well as to promote interoperable, innovative, safe, open, and efficient payments systems.
4. Working with the industry, Payments NZ is leading the development of open banking in Aotearoa New Zealand through the API Centre. Open banking refers to a system in which customers can make payments and instruct their banks to share their financial data, such as account information and transaction data, with other banks and third party providers (like fintechs). The purpose of open banking is to increase competition and innovation in banking, payments and financial data services, leading to better products and services for customers.
5. Open banking is typically interconnected with the concept of APIs. An API is a set of routines, protocols, and tools for building software applications and specifying how software components should interact. As described by the Commerce Commission, in simple terms, an API "specifies how two computer applications talk to each other".² APIs are widely acknowledged as the most safe and secure way for banks and third party providers who use different systems to share customer data.
6. The API Centre was established on the basis of a bilateral partnering model, under which Standards Users can use the API Centre's API Standards and form bilateral agreements with other Standards Users. In summary, the bilateral model requires:
 - (a) preliminary work by each API Provider to determine the level of risk presented by a Third Party's access to the API Provider's system. Typically this involves a Third Party sharing information about its business model and operations with the API Provider; and

¹ For ease of reference, the term "arrangement" is used in this application to refer to a contract, arrangement, or understanding.

² Commerce Commission *Retail Payments System: Payments Between Bank Accounts* at footnote 6 and [3.7].

- (b) API Providers and Third Parties to negotiate criteria and the terms and conditions for partnering, which are based on the level of risk to the API Provider by providing access (meaning that the criteria may change depending on the risk level that has been established). Common topics that are the subject of negotiation include matters relating to liability, pricing, insurance, security requirements, and business models.
7. There are a number of inefficiencies in the bilateral partnering model that are a barrier to more Standards Users entering into partnering arrangements, and prevent Payments NZ from achieving the objectives of the API Centre. The primary issue is that there is a lack of consistency and transparency in respect of the criteria that Third Parties need to meet to be able to partner with API Providers, and the terms on which Standards Users contract with each other.
8. To address the inefficiencies of the bilateral partnering model and facilitate the development of open banking in Aotearoa New Zealand, Payments NZ seeks authorisation for the **Proposed Arrangement**, being an arrangement to allow:
- (a) the API Centre and Standards Users to work together to jointly develop a new partnering framework that includes the following elements:
 - (i) an accreditation scheme (including accreditation criteria) for Third Parties; and
 - (ii) default standard terms and conditions on which API Providers and Third Parties who meet the accreditation criteria contract for the use of APIs; and
 - (b) if the joint development of the accreditation scheme and standard terms and conditions is successful:
 - (i) the API Centre and Standards Users to apply the accreditation scheme and to offer an accreditation scheme for Third Parties to apply to;
 - (ii) API Providers to agree to contract with accredited Third Parties for the use of APIs on the default standard terms and conditions (as developed through the above process); and
 - (iii) API Providers to apply the default terms and conditions, unless both parties agree to use/apply different terms.
9. Authorisation is sought as the development of the accreditation scheme and default standard terms and conditions, and the subsequent application of the matters that have been agreed, will contain provisions that are or might be cartel provisions. The arrangement will involve competing API Providers and competing Third Parties (facilitated by Payments NZ):
- (a) agreeing on the accreditation scheme and accreditation criteria; and
 - (b) setting default standard terms and conditions (including terms about a pricing structure, pricing principles, and allocation of liability) and agreeing to use the terms and conditions developed as the default. Further detail about matters that the standard terms and conditions will cover is set out in Appendix 01.
10. The Proposed Arrangement will therefore involve agreement between competitors as to the terms on which they will contract with other parties, and parties with which they will or will not contract

(and essentially involve parties that compete on a number of levels agreeing the entry conditions for Third Parties). For example, the accreditation scheme will exclude Third Parties that cannot meet the agreed accreditation criteria or accept the terms and conditions from automatically being able to access API Services.³ It may also include an arrangement or understanding between competing API Providers not to contract with certain excluded organisations or classes of organisation. Such arrangements can be characterised as restricting output or market allocation. The Proposed Arrangement will also involve discussions and agreement on matters that can be characterised as price fixing, such as terms about pricing structures and pricing principles that API Providers must adhere to.

11. Authorisation is sought for the development of the accreditation scheme and default standard terms and conditions, rather than just an agreement to implement them, as the joint development will involve discussions and information sharing about the basis on which competing API Providers and competing Third Parties will contract. The joint development could therefore involve an understanding between competitors being reached as to terms such as the pricing structures and allocation of risk that will be used in agreements between API Providers and Third Parties, and the parties to whom API Providers will (and will not) provide services.
12. For completeness:
 - (a) an API Provider may still (but will not be required to) contract with a Third Party who does not meet the accreditation criteria on terms and conditions that the API Provider and Third Party agree;
 - (b) the Proposed Arrangement would not require parties with existing bilateral agreements to renegotiate such agreements.
13. While the net effect of the Proposed Arrangement on competition is positive, the Proposed Arrangement has potential competitive detriment (ie, lessening of competition), such as the potential to dampen the incentive of API Providers to innovate in relation to the criteria they adopt for partnering.
14. However, any competitive detriments that might arise from the Proposed Arrangement will clearly be outweighed by the significant public benefits that arise from the timely introduction of open banking services in Aotearoa New Zealand.
15. The Proposed Arrangement is likely to:
 - (a) facilitate a more well-utilised, secure, and innovative open banking framework in Aotearoa New Zealand, on the basis that it is expected to mitigate the ongoing difficulties with bilateral partnering, which are currently barriers to open banking in Aotearoa New Zealand, and provide increased and more secure alternatives to existing methods of obtaining access to customer account data and payment initiation services (such as screen scraping);
 - (b) allow the API Centre to continue in its role as leading Aotearoa New Zealand's open banking future by developing an accreditation framework and standard terms and conditions that are

³ The ability to initiate payments on behalf of customers or access customer data through standardised APIs that comply with API Standards published by the API Centre are referred to in this application as **API Services**.

fit for purpose, and which will facilitate increased uptake of partnering between API Standards Users;

- (c) result in an increase in the number of Third Parties that can partner and an increase in the variety of use cases – this will benefit the industry, and Aotearoa New Zealand, by ensuring that all Standards Users have equivalent access to the ecosystem to provide services to consumers. Even if the parties to the Proposed Arrangement cannot reach consensus on some of the standard terms and conditions, or the accreditation criteria, there will still be benefits in the process of trying to reach consensus. This is because the discussions will contribute to identification of issues (some of which may be able to be resolved), which would accelerate the maturity of the API ecosystem overall;
 - (d) have flow through benefits to consumers in the form of open banking, which will:
 - (i) allow Third Parties to offer, and customers to use, a wider variety of Open Banking Services compared with the counterfactual;
 - (ii) encourage competition between Third Parties offering Open Banking Services, which may improve innovation;
 - (iii) encourage competition between API Providers and Third Parties, which may result in benefits for consumers in the form of innovative services or financial benefits;
 - (iv) make information about banking services, and the offerings from different banks, more accessible to customers; and
 - (v) improve the ease with which customers can use banking services from multiple banks; and
 - (e) result in a framework that would be able to co-exist alongside the requirements that may be implemented under the Customer and Product Data Bill (**CPD Bill**), and be adaptive to future growth based on market need.
16. Without the Proposed Arrangement, each Third Party will need to negotiate contracts with each API Provider individually, and the limitations that currently exist in relation to the bilateral partnering model would therefore continue.
17. In light of the above, Payments NZ submits that the public benefits to be gained from the Proposed Arrangement outweigh the detriment arising from the lessening of competition, and the Commerce Commission should grant the requested authorisation.

PART 1: DETAILS OF APPLICANT AND OTHER PARTIES

The applicant

18. This notice is given by Payments NZ.

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19. The contact person at Payments NZ is:

Natalie Vaughan-Sanders (Senior Legal Counsel, Payments NZ)

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20. Correspondence and enquires should in the first instance be addressed to:

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Wellington 6140

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Telephone: +64 4 498 7304 / +64 9 363 0639

21. Email: tony.dellow@buddlefindlay.com / anna.parker@buddlefindlay.com

Payments NZ

22. Payments NZ is a limited liability company incorporated in Aotearoa New Zealand. It was formed in 2010 by the payments industry with the support of the Reserve Bank of New Zealand.

Payments NZ is a governance body at the heart of Aotearoa New Zealand's payment system. Its constitutional objectives include to govern and manage payment system rules and standards as well as to promote interoperable, innovative, safe, open, and efficient payments systems.

23. Payments NZ's vision, purpose, and pillars that comprise its role in the payment system are as follows:

Our vision

World class payments for Aotearoa New Zealand.

This vision speaks to our aspiration to drive world class payments for the benefit of all of Aotearoa and links closely with our purpose.

Our purpose

Our purpose is to empower Aotearoa New Zealand's payments future.

We empower the future of payments in Aotearoa by working with the payments industry to take an inter-generational view of Aotearoa's payments ecosystem. We are committed to driving a world-class network to ensure financial wellbeing and equity, build a more productive economy, and encourage greater innovation and competition.

Pillars

Our role is focussed on kaitiakitanga – leading, governing and connecting the payments ecosystem and, bringing people together to design and deploy the payments system of the future. We take an inter-generational view on core system components and act as a change agent and by working closely with our industry stakeholders and regulators on public policy outcomes.

To achieve this, we focus our everyday work on four key role pillars:

- *Pillar one – Leading the industry into the future*
- *Pillar two – Enabling the trusted transfer of value*
- *Pillar three – Being the go-to knowledge centre and authority on payments*
- *Pillar four – Driving a collaborative, innovative, open and safe payments network.*

24. Payments NZ manages three of Aotearoa New Zealand's core payment clearing systems. It operates in accordance with its constitution (attached as Appendix 02) and the Payments NZ Rules. Further information about Payments NZ can be found on its website: <https://www.paymentsnz.co.nz/>.
25. All participants in Payments NZ's clearing systems agree to be bound by the Payments NZ Rules, which are (in effect) a multilateral contract between Payments NZ and participants that set out the framework for access to, participation in, and governance of each clearing system. The rules, standards, and procedures that govern each of the clearing systems, which cover the range of different payment methods used in Aotearoa New Zealand, set out the requirements for how payments are processed between financial institutions efficiently and securely.
26. Payments NZ is owned by eight banks: ANZ Bank New Zealand Limited (**ANZ**), ASB Bank Limited (**ASB**), Bank of New Zealand (**BNZ**), Citibank, N.A. (**Citibank**), The Hongkong and Shanghai Banking Corporation Limited (**HSBC**), Kiwibank Limited (**Kiwibank**), TSB Bank Limited (**TSB**), and Westpac New Zealand Limited (**Westpac**). These were the existing settlement banks at the time

that Payments NZ was formed. It has 11 directors, comprising an independent chair, two independent directors, and a director appointed by each shareholder (**Payments NZ Board**).⁴ Directors are required, at all times, to act in the best interests of Payments NZ. An ownership and governance structure diagram for Payments NZ is set out in Appendix 03.

27. Payments NZ has Participants and Members:
 - (a) **Participants** are financial organisations that have joined Payments NZ's clearing system(s) to exchange payments directly with other Participants. To be a Participant, a financial organisation must satisfy an access criterion set out in the Payments NZ Rules – namely that it will not introduce significant risk into a clearing system or undermine the integrity of reputation of a clearing system. The access requirements are designed to encourage participation while maintaining the safety and integrity of the payments system.
 - (b) **Members** are organisations from the payments ecosystem that have each joined Payments NZ as a Member to be actively involved in the ongoing development and strategic direction of Aotearoa New Zealand's payments system.
28. Details of Payments NZ's Participants and Members are available on Payments NZ's website at [Participation | Payments NZ](#) and [Membership | Payments NZ](#).

Payments Modernisation Plan

29. Payments NZ also works with the industry to lead the future direction of payments and open banking in Aotearoa. As part of its future direction work, Payments NZ has set a Payments Modernisation Plan within its Payments Direction Programme (attached as Appendix 04). The Payments Modernisation Plan sets out a range of system capabilities required for a modern payments system. Several significant projects have been initiated out of this programme, including the establishment of the API Centre, the development of the API Standards, and the transition in 2023 to 365-day payments (known as the SBI365 project).
30. The Payments Modernisation Plan is now focussed on a next generation payments system to assess the delivery of new real-time payments infrastructure for Aotearoa. Next generation infrastructure, utilising modern connectivity platforms and API enablement alongside existing payment systems, would introduce a significant alternative payments capability and provide modern functionality (including real-time account to account payments which could be utilised in retail payments scenarios). The design objectives of the next generation payments initiative include broader access (increasing competition and innovation), efficient and cost-effective exchanges of payment and associated information in real-time, and improved protection against fraud and scams.

Te ao Māori strategy

31. As part of Payments NZ's overall company strategy, it has a specific te ao Māori strategy. That strategy outlines Payments NZ's role as a kaitiaki of the payments system and its commitment to ensuring the representation and rangatiratanga of Māori in the payments network. The strategy acknowledges the aspiration of financial equity and asserts that payments that enable equity for Māori will enable equity for all. In the context of its standards development activity, Payments NZ is

⁴ For completeness, Payments NZ has 17 directors registered on the Companies Office. This includes the 11 directors, as well as six alternate directors.

currently working with Māori data experts to consider how to incorporate Māori data governance principles and practice into its standards development, starting with a pilot in its API Centre.

API Centre

32. Established in May 2019, the API Centre is a business unit within Payments NZ that is responsible for:
 - (a) developing, maintaining, and publishing API Standards;
 - (b) promoting system efficiency, safety, and innovation through the use of the API Standards by registered Standards Users on agreed terms and conditions that set out the basis on which the API Centre's API Standards are made available to API Providers and Third Parties (the API Centre Terms and Conditions, attached as Confidential Appendix 05); and
 - (c) facilitating Standards Users entering into partnerships to bring new innovations to market more simply and quickly.
33. An overview of the work undertaken by the API Centre is set out in Appendix 06.
34. The objectives of the API Centre are:
 - (a) to enable access to a shared API framework that allows for a consistent and usable specification to access, develop, and deliver API-based offerings and applications;
 - (b) to have agreed common standards and specifications, resulting in faster and more efficient consumption of data and information in the market;
 - (c) to provide enhanced levels of payments innovation and service, resulting in better outcomes for customers;
 - (d) to allow for simplified partnering between API Providers and Third Parties, meaning new API-based technology will be extendable, evolving over time, and have simplified integration;
 - (e) to provide clarity and deliver efficiency, while allowing for API Providers to manage risk and controls for access to customer data; and
 - (f) to enable API Providers and Third Parties to innovate and develop new business opportunities.

API Council

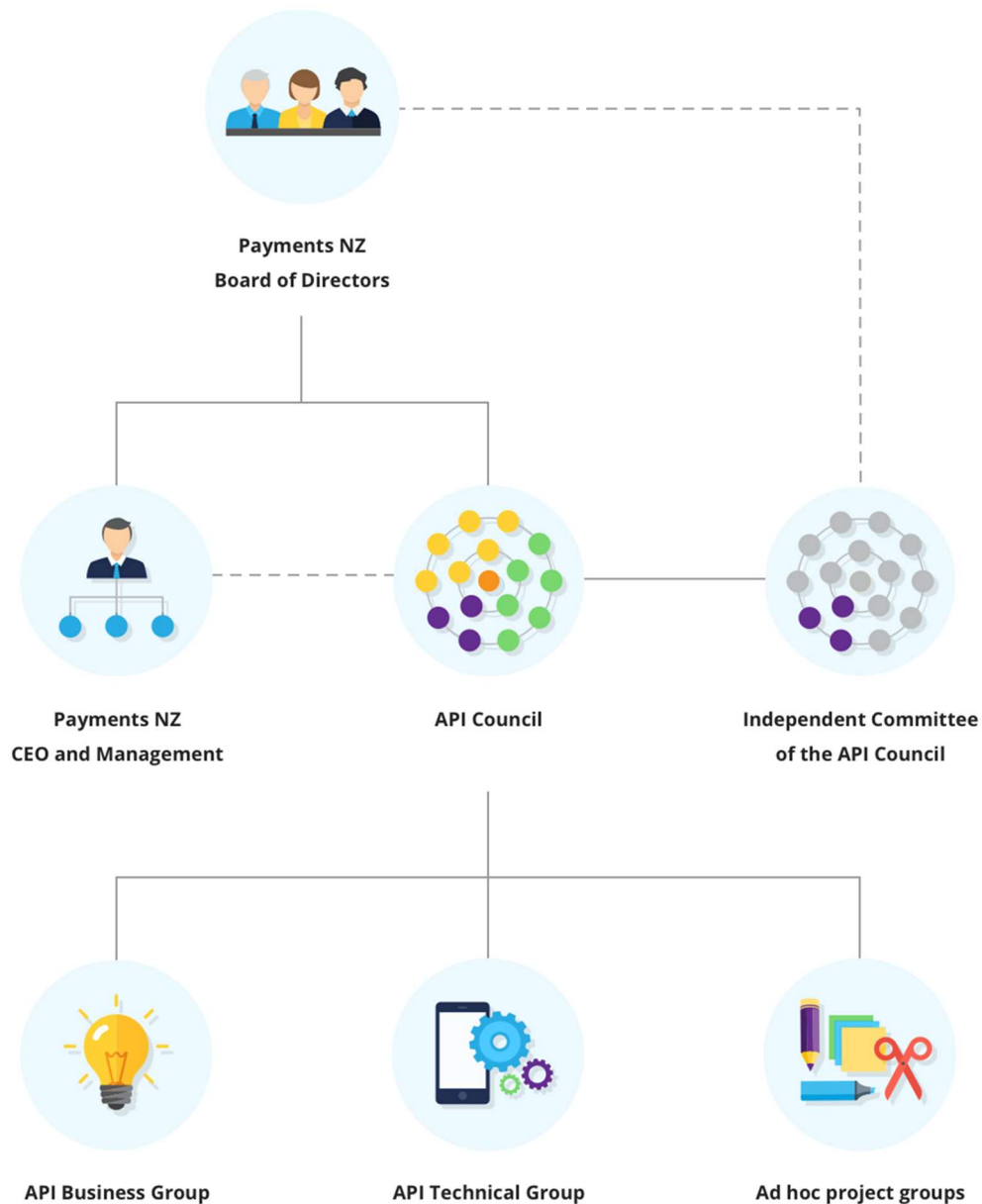
35. The Payments NZ Board is responsible and accountable for the API Centre and the functions that it undertakes. The Payments NZ Board has a number of roles with respect to the API Centre, for example, approving the API Centre's annual workplan and budget, approving amendments to the API Centre Terms and Conditions; approving the Minimum Open Banking Implementation Plan, approving exemptions from obligations under the API Centre Terms and Conditions and managing breaches, and approving appointments to the API Council. In carrying out these functions, the Payments NZ Board must act in the best interests of Payments NZ (promoting interoperable, innovative, safe, open, and efficient payment systems).

36. The Payments NZ Board has delegated to the API Council day-to-day governance of the API Centre as well as the ability to approve the development, maintenance, and publication of the API Standards (including the release of new API Standards).
37. The API Council is appointed by the Payments NZ Board, and is comprised of:
 - (a) up to six registered API Providers. There are five permanent seats reserved for the five largest API Providers and one rotational API Provider seat;
 - (b) up to six registered Third Parties. One seat is reserved for the smallest Third Party category represented in the API Centre at the time of appointment; and
 - (c) three independent members, one of whom is the chair of the API Council. An independent director of Payments NZ is eligible to be an independent member of the API Council.
38. Members must act in what they believe to be the best interests of the API Centre, not just the interests of their own institution. Members of the API Council have a two year term. At the end of the term, an election is held, and the individual previously holding a seat is eligible for re-election.
39. The API Council currently has a representative from the Ministry of Business, Innovation and Employment who attends API Council meetings as an observer (but does not vote).
40. Details of the current members of the API Council are set out in Appendix 07.

Working groups

41. To assist the API Council to develop and maintain API Standards, it has established two working groups – the Business Working Group and the Technical Working Group. Both of the Working Groups are made up of two representatives from Standards Users. The Working Groups are each governed by terms of reference. Their role is to provide recommendations to the API Council in accordance with their roles and responsibilities set out in their respective terms of reference. The API Council can also establish ad-hoc working groups as and when required. Previously, the API Council established the Partnering Working Group.
42. As set out further below, if authorisation is granted, an Accreditation and Partnering Working Group will be established to discuss and develop the Proposed Arrangement.
43. Figure 1 below sets out a summary of the governance of the API Centre:

Figure 1 API Centre governance



API Providers

44. API Providers are financial institutions that issue bank accounts to customers (using Payments NZ's standard for bank account formats), intend to provide standardised API endpoints to Third Parties, and are registered as API Providers with Payments NZ. To be registered as an API Provider with Payments NZ, the institution must:

- (a) be a New Zealand registered bank, a New Zealand non-bank deposit taker, or an entity prudentially regulated by the Reserve Bank of New Zealand or the Financial Markets Authority New Zealand;

- (b) issue and provide bank accounts to its customers using the Payments NZ standard for bank account formats; and
- (c) have a genuine business interest in the use of APIs developed using the API Standards.

45. Currently there are seven API Providers:

- (a) ANZ: <https://www.anz.co.nz/>;
- (b) ASB: <https://www.asb.co.nz/>;
- (c) BNZ: <https://www.bnz.co.nz/>;
- (d) Heartland Bank: <https://www.heartland.co.nz/>;
- (e) Kiwibank: <https://www.kiwibank.co.nz/>;
- (f) TSB: <https://www.tsb.co.nz/>; and
- (g) Westpac: <https://www.westpac.co.nz/>.

46. Contact details for the API Providers are set out in Appendix 08.

Third Parties

47. Third Parties are entities that intend to use standardised API endpoints provided by registered API Providers and are registered as a Third Party with Payments NZ. To be registered as a Third Party with Payments NZ, the entity must:

- (a) have a New Zealand bank account;
- (b) have a New Zealand GST number; and
- (c) have a genuine business interest in the use of APIs developed using the API Standards.

48. Currently there are 17 Third Parties:

- (a) Accredo: <https://accredo.co.nz/>;
- (b) Akahu: <https://www.akahu.nz/>;
- (c) Axiom Applied Technologies and Development: <https://axiomtechnologies.com/>;
- (d) BlinkPay: <https://www.blinkpay.co.nz/>;
- (e) Centrapay: <https://centrapay.com/>;
- (f) Datacom: <https://datacom.com/nz/en/>;
- (g) Equifax: <https://www.equifax.co.nz/>;
- (h) Mastercard: <https://www.mastercard.co.nz/en-nz.html>;
- (i) Middleware NZ: <https://www.middleware.co.nz/#/>;
- (j) Qippay: <https://qippay.com/>;
- (k) SalectNZ Limited;
- (l) Visa: <https://www.visa.co.nz/>;

- (m) Volley: <https://volley.nz/>;
- (n) Worldline: <https://www.paymark.co.nz/>;
- (o) Xero: <https://www.xero.com/nz/>;
- (p) Investnet | Yodlee: <https://www.yodlee.com/au/>; and
- (q) Youtap: <https://youtap.com/>.

It is anticipated that the API Providers will also be users of the other API providers' API endpoints and so, in that sense, can be regarded as being Third Parties as well as API Providers.

- 49. Contact details for the Third Parties are set out in Appendix 08.
- 50. API Providers and Third Parties are collectively referred to as **Standards Users**.

Other parties

- 51. A person or organisation with an interest in the API Centre's work can join the API Centre as a 'Community Contributor'. The API Centre's Community Contributor registration is designed to encourage widespread participation in the industry-led development of API standards. A Community Contributor may be, for example, an individual or organisation working on the development or iteration of a relevant API offering, or considering Standards User registration in the future.
- 52. There are currently approximately 250 Community Contributors signed up to the API Centre.
- 53. Community Contributors get access to the API Centre's sandbox to test innovations against the API standards and receive updates about the standards and invitations to API community events. API Standards are publicly available but can only be used in accordance with the API Centre Terms and Conditions.
- 54. Contact details for Community Contributors who have consented to their contact details being provided to the Commission are set out in Appendix 08.

PART 2: THE INDUSTRY

Overview of Aotearoa New Zealand's payments system

56. Payments are the transfer of value, and are the most used financial services in Aotearoa New Zealand. The payments system is a network of interconnecting systems, services, and products and the underlying infrastructure, rules, and standards that enable payments to be sent and received. These systems, services, and products are provided by a range of different entities (such as banks and payment service providers). Aotearoa New Zealand depends on the payments system to send and receive money and to purchase goods and services.
57. We understand that the Commission is familiar with Aotearoa New Zealand's payments system, in particular because of its monitoring role of the retail payments system under the Retail Payment System Act 2022. That being the case, this application does not go into detail about Aotearoa New Zealand's payments industry. Further information about Aotearoa New Zealand's payments system can be found on the Reserve Bank of New Zealand's [website](#) (specifically its article "*New Zealand's payment landscape: a primer*" **attached** as Appendix 09) and the Commerce Commission's paper titled "*Retail Payment System: Payments Between Bank Accounts*" (July 2023).

Open banking and APIs in Aotearoa New Zealand

58. Open banking refers to a system in which customers can make payments and instruct their banks to share their financial data, such as account information and transaction data, with other banks and third party providers (like fintechs). The purpose of open banking is to increase competition and innovation in banking, payments, and financial data services leading to better products and services for customers.
59. Open banking is typically interconnected with the concept of APIs. An API (Application Programming Interface) is a set of routines, protocols, and tools for building software applications and specifying how software components should interact. APIs are widely acknowledged as the most safe and secure way for banks and third party providers who use different systems to share customer data.
60. An API specifies how two computer applications talk to each other.⁵ APIs work using "requests" and "responses". For two software applications to integrate over the internet, one application (the "client") sends a request to the other application's API. The client may "request" a resource from the app's database or ask to perform an action on the server.
61. Once an API has received and validated the client's request, the API performs the requested action, and sends a response back to the client. This response includes the status of the request (eg, completed or denied) and any resources requested by the client.
62. In order for a client to specify which resources it wants, it specifies an "API endpoint" in its request. An API endpoint is a digital location where an API receives requests about a specific resource on its server. An API endpoint is typically a uniform resource locator (URL) that provides the location of a resource on the server.

⁵ Commerce Commission *Retail Payments System: Payments Between Bank Accounts* at footnote 6 and [3.7].

63. Open banking is a developing area, and is becoming increasingly prominent across the world. A number of jurisdictions have engaged in legislative reform that facilitates open banking, including by strengthening consumer data portability (such the European Union through its General Data Protection Regulation and Australia through its Consumer Data Right), and specifically addressing data portability in the banking sector (such as the UK mandating the largest banks to implement common standards for open banking and the European Union's Payment Services Directive (PSD2)).

Open banking in Aotearoa New Zealand

64. A high level timeline of open banking's development in Aotearoa New Zealand is set out in Figure 2 below.

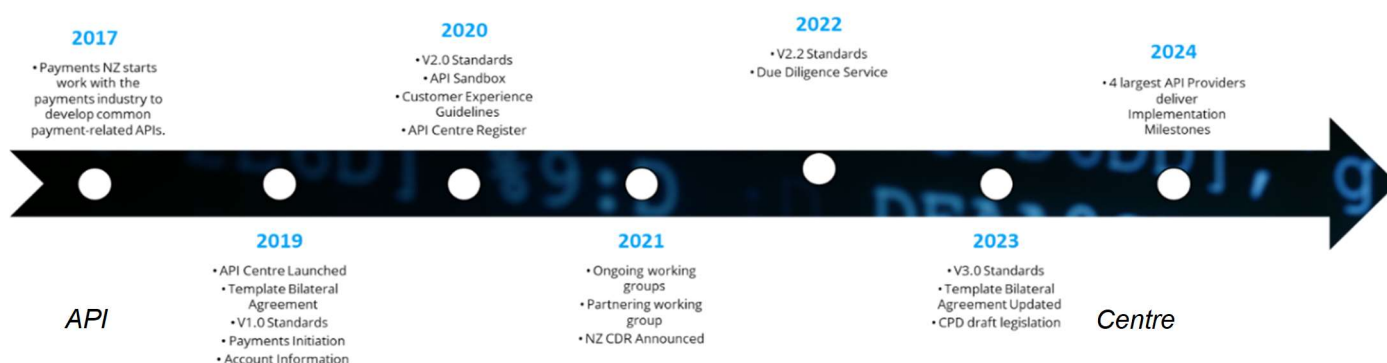


Figure 2 - Timeline of open banking development in Aotearoa

65. Detail about open banking in Aotearoa New Zealand is set out in Payments NZ's recent report, *Looking Ahead: Open banking in Aotearoa New Zealand* (November 2023).⁶

66. Payments NZ is leading the development of open banking in Aotearoa New Zealand through the API Centre.

67. The API Centre is the service established by and within Payments NZ to develop, maintain, and publish API Standards and govern the use of API Standards by Standards Users. API Standards are the standards and protocols developed by the API Centre in partnership with Standards Users that have the purpose of enabling Third Parties to connect with API Providers in a consistent way so that Third Parties' integration with banks does not need to be customised for each API Provider.

68. There are currently three Standards:

- (a) the Payment Initiation API Standard enables Third Parties, with customer consent, to set up and make an electronic credit payment by connecting directly and safely with banks;
- (b) the Account Information API Standard enables Third Parties, with customer consent, to access specific financial information relating to an account; and
- (c) the Security Profile Standard defines how Standards Users will securely and safely interact using the industry standardised APIs.

⁶ <https://www.apicentre.paymentsnz.co.nz/news/articles/looking-ahead-open-banking-in-aotearoa-new-zealand/>

69. The API Centre Standards are available at <https://paymentsnz.atlassian.net/wiki/spaces/PaymentsNZAPIStandards/overview>.
70. The API Centre was established on the basis of a bilateral partnering model, in which Standards Users can use the API Standards and form bilateral agreements with other Standards Users. The intention is to develop the model further as the open banking industry and the API Centre mature.
71. Earlier this year, the API Centre announced its Minimum Open Banking Implementation Plan. Under that Plan, Aotearoa New Zealand's five largest API Providers (ANZ, ASB, BNZ, Westpac, and Kiwibank) must meet the minimum requirements in particular versions of the API Standards by specific timeframes (30 May 2026 for Kiwibank and 30 May 2024 for the other four banks). BNZ has already met the minimum requirements for payment initiation.
72. The five largest API Providers have combined market shares in excess of 90% based on the Reserve Bank of New Zealand's data and bank financial statements on assets, and deposits in Aotearoa New Zealand. Payments NZ has its own confidential data that supports the Reserve Bank of New Zealand's data.

Bilateral partnering model and issues

73. The bilateral model is described further below in paragraphs 130 to 137.
74. In summary, the bilateral model requires:
 - (a) preliminary work by each API Provider to determine the level of risk presented by a Third Party's access to the API Provider's system. Typically this involves a Third Party sharing information about its business model and operations with the API Provider; and
 - (b) API Providers and Third Parties to negotiate criteria for partnering, which are based on the level of risk to the API Provider by providing access (meaning that the criteria may change depending on the risk level that has been established).
75. Given that the API ecosystem is still in early stages of development, the bilateral model has been the basis for the limited set of partnerships that have been entered into between Standards Users to date. For the reasons set out below, partnering arrangements are not able to be done at scale because they are not easily replicated. At this stage, there are only five Third Parties that have entered into partnering arrangements using the API Centre's standardised APIs (BlinkPay, Qippay, Volley, Datacom and Worldline).
76. By its nature, the bilateral model requires negotiation about the criteria and terms for partnering between API Providers and Third Parties, which are confidential to those parties. Accordingly, Payments NZ has limited oversight of, and interaction with Standards Users in relation to, the partnering arrangements that have occurred. Payments NZ initially considered that the bilateral model would encourage competition between banks, on the basis that API Providers would all seek to partner with Third Parties.

Limitations of the bilateral model

77. Feedback on the bilateral model has indicated that there are inefficiencies in the model that are a barrier to more Standards Users entering into partnering arrangements and prevent Payments NZ from achieving the objectives of the API Centre. The primary issue is that there is a lack of

consistency and transparency in respect of the criteria that Third Parties need to meet to be able to partner with API Providers, and the terms on which Standards Users contract with each other.

Broadly, the consequences of this lack of consistency mean that:

- (a) Standards Users incur significant (and variable) time and cost in partnering, as each service agreement is negotiated and agreed individually;
- (b) there are no efficiencies of scale when each API Provider assesses each Third Party independently, and each API Provider may have a different perspective on risk of each Third Party;
- (c) API Providers have taken, and are taking, a risk averse approach to partnering with Third Parties in order to minimise reputational, regulatory, and operational risks. This means that Third Parties may be subject to partnering criteria that may be more onerous than they would expect with standardised access to APIs;
- (d) in order for API Providers to determine the risk of access by a Third Party, a Third Party is typically required to share a use case for an API, which is a commercial disadvantage for a Third Party and may disincentivise investment and innovation in open banking. As a result, Third Parties that need to share use cases for access to APIs may reduce competition in markets for services where API Providers and Third Parties compete;
- (e) Third Parties face costs in meeting different sets of criteria for access from multiple API Providers, and uncertainty about whether they will be able to enter into partnerships with the largest five API Providers to achieve market coverage and reach most customers;
- (f) there are differences in pricing structure for each API Provider, and Third Parties may be unable to partner with, or have to incur costs to comply with the pricing structure set by, the API Provider;
- (g) Standards Users face capacity constraints when negotiating multiple agreements simultaneously;
- (h) an API Provider is incentivised to partner with Third Parties that provide commercial benefit to the API Provider, rather than compete with it;
- (i) if a Third Party is not confident that it will be able to partner with all API Providers in a timely way, it impacts:
 - (i) Third Parties' capital-raising efforts; and
 - (ii) the success of Third Parties' business propositions and their reputation;
- (j) when an API Provider (who is also a Third Party) partners with another API Provider, there are further considerations that arise:
 - (i) the parties may agree terms that are different from other Third Party agreements; and
 - (ii) API Providers may be unwilling to disclose their use cases to each other, which may delay or prevent partnering, inhibit innovation by banks, and competition between banks.

The Partnering Project

78. In March 2021, the API Centre initiated the Partnering Project (**Project**). The Project set out to achieve a significant and material improvement to the bilateral partnering model by defining a Partnering Framework that could be adopted by the API Centre and Standards Users. The Project proposed a high-level framework that includes components such as:
- (a) a range of partnering scenarios and risk-based tiers that Third Parties could fit into;
 - (b) a common industry risk assessment for partnering;
 - (c) a set of liability allocation principles;
 - (d) a Third Party accreditation regime with criteria for Third Parties to meet to qualify for partnering;
 - (e) a streamlined base partnering agreement between a Third Party(s) and API Provider(s) that references an API Centre managed set of partnering rules;
 - (f) an end-to-end process and support for accreditation and partnering including accreditation lifecycle management; and
 - (g) an approach to how customer trust can be created and have the right safeguards in place.
79. The work to develop this framework progressed until issues related to liability, risk, and standardised agreements could not be discussed any further, as Payments NZ considered doing so would risk breaching the Commerce Act without an authorisation from the Commission.

Government approach to open banking

80. The Government has expressed a clear intent for the industry to expedite its progress towards developing open banking in Aotearoa New Zealand. In particular:
- (a) In 2017, the Minister of Commerce and Consumer Affairs, Jacqui Dean, wrote to Payments NZ, encouraging it to take proactive measures to promote payment innovation and create a platform for viable alternatives to the existing payment options in the Aotearoa New Zealand market. Payments NZ responded in April 2018, updating the Minister in particular on its work developing the API Standards.
 - (b) In April 2019, the Minister of Commerce and Consumer Affairs, Kris Faafoi, encouraged the industry to continue its progress towards developing a shared API framework. In December 2019, he subsequently issued an open letter to API Providers expressing concerns about banks' slow progress in implementing the API Standards. He requested that API Providers:
 - (i) ensure that open banking was a clear priority within their organisations;
 - (ii) implement and test the relevant standards;
 - (iii) meet the API Council's reporting requirements; and
 - (iv) commit to seeking shared industry solutions that promoted the interests of the payments industry.

- (c) The Government has progressed the introduction of a consumer data right (CDR) framework in Aotearoa New Zealand. In July 2021, the Government confirmed its decision to establish such a framework for Aotearoa New Zealand. The Government confirmed that the banks will be the first sector to implement the CDR mechanism in Aotearoa New Zealand in November 2022. More recently in July 2023, the Government released an exposure draft of the Customer and Product Data Bill, which sets out Aotearoa New Zealand's regulatory framework for a CDR.
- (d) The Commission recently published a paper titled "*Retail Payment System: Payments Between Bank Accounts*" (July 2023) which seeks feedback on how the Commission can better promote new payment options that allow consumers to make payments between bank accounts. Paragraph 4.26 of that paper provides that industry is encouraged to "*seek to address its competition law concerns by engaging with [the Commission] to explore the issue further, including any options available to mitigate these concerns where appropriate*".

PART 3: PROPOSED ARRANGEMENT

81. Payments NZ seeks authorisation for the **Proposed Arrangement**, being an arrangement to allow:
- (a) the API Centre and Standards Users to work together to jointly develop a new partnering framework that includes the following elements:
 - (i) an accreditation scheme (including accreditation criteria) for Third Parties;
 - (ii) default standard terms and conditions on which API Providers and Third Parties who meet the accreditation criteria contract for the use of APIs; and
 - (b) if the joint development of the accreditation scheme and standard terms and conditions is successful:
 - (i) the API Centre and Standards Users to apply the accreditation criteria and to offer an accreditation scheme for Third Parties to apply to;
 - (ii) API Providers to agree to contract with accredited Third Parties for the use of APIs on the default standard terms and conditions (as developed through the above process); and
 - (iii) API Providers to apply the default terms and conditions, unless both parties agree to use/apply different terms.
82. Authorisation is sought in respect of both current and future Standards Users.
83. Under the Proposed Arrangement, once a Third Party has satisfied the accreditation criteria, API Providers would be required to apply the default terms and conditions, unless both parties agree to use/apply different terms. An API Provider may still (but will not be required to) enter into a bilateral agreement with a Third Party who does not meet the accreditation criteria on terms and conditions that the API Provider and Third Party agree. Further detail about the Proposed Arrangement is set out below in paragraphs 87 to 101. An illustrative diagram of the scope of the Proposed Arrangement (compared with the current state) is attached as Appendix 10.
84. For completeness:
- (a) Payments NZ is not seeking authorisation for the specific accreditation criteria or standard terms and conditions themselves; and
 - (b) the Proposed Arrangement would not require existing bilateral arrangements to be renegotiated.
85. It is proposed that the authorisation be granted for an initial period of five years. This will enable the parties and the Commission to reassess the need for the authorisation in light of industry developments and the regulatory environment in the intervening period.
86. Payments NZ has considered whether it should seek two separate authorisations – one for the arrangement described in paragraph 81(a) and, if the joint development of the accreditation scheme and standard terms and conditions is successful, then for the conduct described in paragraphs 81(b)(i) to 81(b)(iii). Payments NZ does not consider that two applications are necessary or practical because:

- (a) the Commission has jurisdiction to grant authorisation for both aspects of the Proposed Arrangement (as set out in paragraphs 106 to 114 below) and the public benefits to be gained from both aspects of the Proposed Arrangement outweigh the detriment arising from the lessening of competition (as set out in Part 6 below). It is therefore not necessary for Payments NZ to put forward two separate applications;
- (b) the Commission has previously authorised similar conduct in the context of collective bargaining.⁷ The Proposed Arrangement is analogous to collective bargaining in that Third Parties and API Providers will collectively negotiate the terms and conditions on which Third Parties can access APIs from API Providers;
- (c) a similar approach has been taken by the Australian Competition and Consumer Commission to a number of authorisations (to allow applicants to discuss, as well as agree and give effect to, arrangements), including authorising the Australian Banking Association on behalf of its members to discuss, agree, and give effect to any arrangement or understanding between them (and potentially third-party suppliers and/or agents) to benefit their customers for certain purposes relating to financial relief during COVID-19;⁸
- (d) it is unclear why separate applications would be required, except to enable the Commission to review the accreditation scheme and standard terms and conditions that are developed before authorising Third Parties and API Providers to agree to apply the accreditation scheme and standard terms and conditions. This would result in the Commission being the de facto regulator of the terms and conditions on which Third Parties contract with API Providers for access to APIs, which Payments NZ understands the Commission considers is undesirable and beyond the scope of its role;
- (e) if the Commission does not authorise both aspects of the Proposed Arrangement, then it would be effectively authorising the API Providers and Third Parties to come to a consensus about how they will behave in relation to accessing APIs. If the Commission did not authorise the second aspect of the Proposed Arrangement, then the API Providers and Third Parties will be left having come to that consensus; and
- (f) the Commission can be satisfied that the process by which the API Providers and Third Parties will jointly develop the accreditation scheme and standard terms and conditions balances the interests of API Providers and Third Parties due to the governance arrangements of the API Centre. As set out at paragraph 102 below, the proposed arrangements for the Accreditation and Partnering Working Group mean recommendations about the accreditation criteria and standard terms and conditions will only be made if there is support from both API Providers and Third Parties. Accordingly, the Commission should not have concerns that the accreditation scheme or standard terms and conditions that are developed will unduly favour API Providers over Third Parties (or vice versa) or will not facilitate competition.

⁷ For example, authorising News Publishers' Association of New Zealand Incorporated to engage in collective negotiations with Google and Meta, and New Zealand Tegel Growers Association to engage in collective negotiations with Tegel Foods Limited

⁸ Other examples include: [Coles Group and others \(November 2022\)](#), [AdBlue Manufacturers and Distributors \(October 2022\)](#), and [Chevron, Mobil, and Shell \(November 2009\)](#).

Elements of Proposed Arrangement

Development and application of accreditation scheme for Third Parties

87. API Providers and Third Parties will work together with the aim of jointly developing standard accreditation criteria for Third Parties. The key elements of the accreditation scheme will include that:
- (a) the accreditation criteria will set out minimum requirements for Third Parties to be accredited for access to standardised APIs from API Providers, to ensure the risk presented by Third Parties being able to connect to API Providers' systems is acceptable; and
 - (b) certain organisations or classes of organisations will not meet the accreditation criteria. For example (and while this would be subject to discussion as part of the development of the scheme), organisations that are involved in particular types of activity (eg, criminal activity) or do not meet 'fit and proper person' criteria.
88. The operational processes for the accreditation scheme are still to be developed, but Payments NZ also expects that:
- (a) Standards Users may be able to make submissions on a Third Party's application for accreditation. The accreditation body would then take any submission into account when making a decision about whether to accredit a Third Party; and
 - (b) the API Centre's existing exemptions regime in the terms and conditions to be a part of the API Centre could enable API Providers to apply for an exemption to not partner with Third Parties (or classes of Third Parties) who meet the accreditation criteria but that the API Provider does not wish to partner with for other reasons.
89. The accreditation criteria will include minimum requirements relating to:
- (a) whether the Third Party is a 'fit and proper person'. This assessment would take into account matters such as any criminal, bankruptcy, or insolvency history, whether the entity can legally operate in Aotearoa New Zealand, the entity's compliance with the law (eg, AML/CFT), and whether the entity is a type of business or use case that is recognised as high risk in the banking sector through other regulation;
 - (b) risk management – eg, requirements for a Third Party's risk and compliance management, including frameworks, governance models, policies, and roles and responsibilities;
 - (c) information security – eg, what security a Third Party needs to have in place to secure data and the transmission of data (and protect it from misuse, interference, loss or unauthorised access, modification, and disclosure), and specific security standards that a Third Party must meet;
 - (d) insurance (ie, whether the Third Party holds an appropriate level of insurance for its intended use cases); and
 - (e) business continuity plans.

90. The accreditation scheme may also require Third Parties to acquire services from a particular provider (eg, use of a conformance testing service or performance monitoring service to monitor compliance).
91. There will likely be different tiers of accreditation (to recognise the varying degrees of risk in the usage of standardised APIs), which will each have different minimum standards for each of the accreditation criteria referred to in paragraph 89. For example, a Third Party with a high risk use case is likely to have to demonstrate greater levels of risk management, and comprehensive insurance than a Third Party with a lower risk use case.
92. If Third Parties meet the minimum standard for each accreditation criterion for a particular tier, then they will be accredited for that tier. API Providers will agree not to undertake their own assessment of the level of risk presented by a Third Party's connection to the API Provider's system. The intended effect of accreditation is that an accredited Third Party will have access to standardised APIs from API Providers, and be entitled to contract with API Providers on the relevant default terms and conditions developed for the relevant tier (subject to agreement on price). That said, the accreditation scheme would be ongoing, and Third Parties would be required to maintain a standard of compliance (and may, for example, be required to validate or provide independent certification of their continued compliance with the minimum standards).
93. The aim of the accreditation scheme is that the accreditation criteria will:
 - (a) be objective, transparent, and impartially applied;
 - (b) enable Third Parties to have a clear understanding of the minimum standards that they need to meet in order to contract with API Providers for the use of APIs;
 - (c) mean that Third Parties can configure systems and processes that meet one set of requirements, rather than having to develop a range of systems and processes to meet a diverse range of requirements across different API Providers (as is currently the case);
 - (d) mean that competing Third Parties will be subject to the same standards as each other, which will promote equal access to open banking services and facilitate a more level playing field for competition in downstream markets; and
 - (e) remove the need for Third Parties to disclose detailed use cases to API Providers (including banks having to disclose use cases in order to partner with each other) because the accreditation scheme is intended to be governed and administered by Payments NZ with independent assessments provided by external service providers. This means that the API Provider will not need to request that information from the Third Party to determine risk, and will therefore only have access to publicly available information about a Third Party's use case.
94. The accreditation scheme will be administered by Payments NZ or another trusted centralised accrediting body. This will be confirmed during the process of developing the accreditation scheme.
95. In relation to API Providers, it is not contemplated that providers seeking to become API Providers would also need to meet accreditation criteria as described above. In future, a new provider who is not part of the API Centre may seek to become an API Provider. Payments NZ considers that new

providers could become part of the Proposed Arrangement by agreeing to the API Centre Terms and Conditions (which will contain obligations to partner on the default terms and conditions with accredited Third Parties as per the Proposed Arrangement). The new API Provider would need to meet the recommended access criteria⁹ and participate in conformance testing to determine that the provider can meet the requirements of the Implementation Plan and API Standards.

Development and application of default standard terms and conditions

96. API Providers and Third Parties will also work together to jointly develop standard terms and conditions on which API Providers and Third Parties who meet the relevant accreditation criteria contract for the use of APIs. Although there may be some variations in the form of the terms and conditions for each accreditation tier, the standard terms and conditions will cover at least the following topics:
- (a) service levels;
 - (b) security measures;
 - (c) allocation of liability and indemnities;
 - (d) pricing structures and fair pricing principles (but not the pricing itself);
 - (e) other matters concerning the relationships between API Providers and Third Parties, such as payment terms, customer consent requirements, confidentiality, intellectual property, complaints and dispute resolution provisions, suspension and termination, force majeure; and
 - (f) other matters relating to API Provider obligations with respect to ensuring consistent customer experiences via a Third Party, including (for example) payment limits, customer consent requirements, access for multi-signatory accounts, and consent timeouts.
97. If the standard terms and conditions are agreed and implemented, API Providers will be required to contract with accredited Third Parties on the standard terms and conditions, with the price to be negotiated. API Providers and Third Parties will retain the ability to negotiate aspects of the terms and conditions of their agreement, but if they cannot agree then the default terms will apply.
98. For further detail about the matters to be covered by the default standard terms and conditions, and the rationale for each term needing to be agreed for the Proposed Arrangement to work effectively, please refer to Appendix 01. Particular terms do not carry more importance than others, as it is the combination of terms that provides a comprehensive set of standard terms and conditions on which API Providers and Third Parties can contract. The complete set of terms will be developed as part of the Proposed Arrangement.
99. It is not proposed that actual prices will be agreed as part of the default standard terms and conditions. However, pricing structure and fair pricing principles are included in the scope of the Proposed Arrangement. Specifically, it is proposed that, as part of the standard terms and conditions, API Providers and Third Parties will discuss, develop, and agree:

⁹ As set out in Payments NZ's API Centre Terms and Conditions.

- (a) pricing structures such as the different components or types of charges (which could include, for example, pay per use or consumption based charges, or fixed monthly charges), but not the actual amounts of those charges; and
 - (b) outcome-focused pricing principles. The key outcomes sought by the API Centre are:
 - (i) To provide guidance on the appropriate degree of **transparency**, which may include discussions on whether pricing should be publicly available information or available on request, whether it should be a standardised price list or a model without fixed prices, for example.
 - (ii) How parties should think about pricing **fairness** and sustainable value exchanges to support innovation in the market without undermining API Providers' incentives to continue to make long term investments. Discussions and agreements may include guidance, for example, that pricing should not be used to discourage the production or adoption of open banking propositions, that pricing should not discriminate, or that pricing should be justifiable/defensible.
100. Payments NZ considers that having principles such as pricing transparency and standard pricing structures that are consistent across API Providers will ensure that prices to be negotiated between individual API Providers and Third Parties do not unduly restrict access. Leaving price setting (ie, actual prices to be charged by API Providers) out of the scope is also intended to mitigate the risk that specifying how prices are set could disincentivise continued investment in the development and implementation of API Standards or create additional barriers for some types of Third Parties.
101. As mentioned above, even with the Proposed Arrangement, an API Provider could still decide to (but will not be required to) contract with a Third Party who does not meet the accreditation criteria. Such contracting will be able to occur on terms and conditions that the API Provider and Third Party agree.
102. To minimise the likelihood that Standards Users cannot agree on the accreditation criteria or default standard terms and conditions, the API Centre will take:
- (a) an inclusive project management approach to ensure that all key stakeholders are proactively engaged in the project, can feed in their perspectives and experiences into recommendations, and are consulted on key issues. An Accreditation and Partnering Working Group will be established, with each Standards User eligible to appoint a representative from its organisation. Members of the Working Group will be required to act in what they believe to be the best interests of the API Centre; and
 - (b) recommendations from the working group to the API Council where the recommendation has majority support (rather than consensus). Majority support will require 70% of those in attendance (with a quorum of two-thirds of all members) to cast their votes in favour of the recommendation, *and* at least half of the API Providers and half of the Third Parties represented on the working group to cast their votes in favour of the recommendation (as set out in the draft terms of reference for the Accreditation and Partnering Project attached as Confidential Appendix 11). If some members do not support a recommendation, the views of

those members will be provided alongside the working group's recommendation to the Council.

Timing and process

103. Work on the Proposed Arrangement will commence once the Commission has granted authorisation.
104. The API Centre has prepared draft terms of reference for the "Accreditation and Partnering Project" (attached as Confidential Appendix 11), so that work can begin promptly if authorisation is granted for the Proposed Arrangement.
105. If authorisation is granted in early 2024, Payment NZ's indicative target timeframes are for the accreditation scheme and standard default terms and conditions to be developed and agreed in 2024, and implementation milestones to start to be met in the second half of 2024.

Commission's jurisdiction to authorise the Proposed Arrangement

Overview

106. In order to identify the competition law implications of the Proposed Arrangement, it is useful to first conceptualise the roles that API Providers and Third Parties play in the affected markets.
107. API Providers (banks) provide Banking Services (as described in paragraphs 121 and 122) to end customers. At this level, API Providers compete with one another to attract end customers.
108. API Providers each collect information about their customers, and facilitate financial transactions for them, by allowing customers to transfer funds between the individual customer's accounts, and between the customer's accounts and the accounts of others, including those of customers of other banks.
109. Banking Services generate the information that will be made available by means of the APIs when implemented. The APIs will also facilitate the initiation of transactions (data requests or payment initiation) by means of software applications provided by Third Parties. API Providers provide those Banking Services to their end customers, and will face greater competition from Third Parties in relation to those Services once APIs are fully implemented and partnering arrangements are concluded.
110. It is important to note that API Providers are, or will be, Third Parties, in that some, if not all, API Providers will seek to expand their offerings to their customers by providing apps that enable the customers to see all of their accounts (regardless of which banks they are with) and initiate payments from any of their accounts (again regardless of which banks they are with).
111. Therefore, the proposed parties to the Proposed Arrangement are competitors on a number of levels relevant to the Proposed Arrangement:
 - (a) API Providers compete with each other to provide Banking Services to end customers;
 - (b) API Providers face competition from each other to provide customer account data and payment initiation services to Third Parties (including to other API Providers) (see paragraph 112 below). They also face competition from providers of alternative methods of providing

those services such as screen scrapers (some of which are Third Parties) to provide customer account data and payment initiation services;

- (c) Third Parties that are existing users of APIs also compete with API Providers to the extent the services that they offer (eg, ability to make payments) are substitutable for banking services offered by API Providers; and
- (d) Third Parties and API Providers compete with each other to provide Open Banking services to end customers.

112. In relation to (b) above:

- (a) the provision of customer account data and payment initiation services by one API Provider is not substitutable for the provision of equivalent data/services by another API Provider;
- (b) however, given API Providers compete to provide Banking Services to customers, there is a degree of competition in that API Providers will want to attract partnerships that benefit customers (eg, through innovative services or protecting customers from risks associated with other methods such as screen scraping) and the API Provider (through achieving a return on investment). Once the standardised APIs are implemented, API Providers can also be expected to provide some constraint on one another in terms of the price and other terms and conditions on which they provide access to Third Parties to their APIs. That is because:
 - (i) Third Parties will usually require access to the APIs of a large number of API Providers;
 - (ii) in the absence of the Proposed Arrangement, Third Parties would need to negotiate separately with each API Provider; and
- (c) if any API Provider demanded prices, or other terms and conditions, that were materially more disadvantageous to Third Parties than those offered by other API Providers, that would result in pressure on that API Provider in the form of complaints to the API Provider, public pressure, complaints to regulators, etc.

Cartel conduct

113. In view of the above, the Proposed Arrangement will contain provisions that are or might be cartel provisions as follows:¹⁰

Accreditation

- (a) The establishment of the proposed accreditation scheme will involve competing API Providers and competing Third Parties (facilitated by Payments NZ) discussing, and seeking to agree on, the accreditation criteria and minimum standards that will enable Third Parties to automatically be able to contract with API Providers to access API Services (ie, the ability to initiate payments on behalf of customers or access customer data through standardised APIs that comply with API Standards published by the API Centre). That is, API Providers and Third Parties will be seeking to agree on matters (for example, the appropriate level of

¹⁰ As set out in section 61(9) of the Commerce Act, for the purposes of section 58(6B) to (6D) and section 61(8)(a) to (c), it is not necessary for the Commission to determine whether a particular provision is in fact a cartel provision, providing there are reasonable grounds for believing that it might be.

insurance) required for a Third Party to be accredited, and therefore limit the Third Parties with whom API Providers agree to contract. It will essentially involve parties that compete on a number of levels agreeing the entry conditions for Third Parties.

- (b) The joint development of the accreditation scheme will involve discussions and information sharing about the types of Third Parties with whom API Providers will contract. The joint development could therefore involve an understanding between competitors being reached as to the parties to whom API Providers will (and will not) provide services.
- (c) The arrangement that results from the development of the accreditation scheme will necessarily include that aspiring Third Parties that do not qualify for accreditation (because they do not meet the agreed accreditation criteria) will not be automatically entitled to contract with API Providers to access API Services under the standard terms and conditions. It may also include an arrangement or understanding between competing API Providers not to contract with certain excluded organisations or classes of organisation.
- (d) As such, the development and application of the accreditation scheme and accreditation criteria could be characterised as involving restricting output or market allocation on the basis that the accreditation scheme will involve Third Parties who cannot meet the agreed accreditation criteria being excluded from automatically having the ability to access API Services.

Standard terms and conditions

- (a) The Proposed Arrangement is intended to involve the setting of terms and conditions that will serve as default terms on which a Third Party will be entitled to obtain API Services from each API Provider provided that the Third Party meets the accreditation criteria.
- (b) The joint development of the terms and conditions will involve discussions and information sharing about the basis on which competing API Providers and competing Third Parties will contract. The joint development could therefore involve an understanding between competitors being reached as to terms such as the pricing structures and allocation of risk that will be used in agreements between API Providers and Third Parties, and the parties to whom API Providers will (and will not) provide services.
- (c) As for accreditation as described above, the arrangement to use the default terms and conditions developed will exclude Third Parties that cannot accept the terms and conditions from automatic access to API Services. This could have the effect of excluding them from the market for the provision of Open Banking services to end customers, or putting them at a material disadvantage as against their competitors, through the need to attempt to persuade each API Provider individually to contract with them on terms that they can accept that differ from the standard terms.
- (d) As such, the aspect of the Proposed Arrangement that involves setting of standard terms and conditions and agreeing to use the terms and conditions developed as the default can also be characterised as restricting output, or market allocation.
- (e) The scope of the authorisation sought does not involve agreeing common pricing for API Services. However, the proposed scope does involve matters that will influence prices. The

most obvious example of this is the proposed inclusion of pricing structure and pricing principles in the standard terms and conditions. Having competing API Providers and competing Third Parties agree a pricing structure and pricing principles would have the effect of controlling price and therefore amount to price fixing.

- (f) Another example is the proposed terms relating to the allocation of liability as between API Providers and Third Parties who partner with them. It is axiomatic that the allocation of liability will have an effect on pricing that API Providers will individually set for the provision of API Services. This arguably means that the Proposed Arrangement involves price fixing even while excluding the setting of the final prices that Third Parties will pay: see *Australian Competition and Consumer Commission v CC (New South Wales) Pty Ltd* (1999) 165 ALR 468, Lindgren J at 504: "*An arrangement or understanding has the effect of "controlling price" if it restrains a freedom that would otherwise exist as to a price to be charged*".

Lessening of competition

114. The net effect of the Proposed Arrangement on competition is positive. However, there are at least theoretical effects on competition:

- (a) Standards Users who participate in the development of the accreditation criteria and standard terms and conditions will inevitably get some degree of insight into their competitors' business strategies. It is submitted that this will be limited, but it will be possible for Standards Users to infer, from the positions taken by others in relation to matters that arise, how their competitors might approach aspects of their businesses. This applies as between API Providers and as between Third Parties, as well as between both API Providers and Third Parties (as API Providers and Third Parties compete or will compete with each other to provide banking services and open banking services as well as access to customer account information and payment initiation services, as discussed in paragraph 111 and the market definition section below); and
- (b) the Proposed Arrangement could be characterised as having the potential to dampen the incentive of API Providers to innovate in relation to the criteria they adopt for partnering, and the interrelated issue of the terms and conditions they use to facilitate partnering while managing their risk. For example, API Providers have incentives to offer/negotiate terms to grow third party relationships that will benefit their business (eg, through achieving a return on investment and customer benefit protections) and their customers (eg, protections through offering an alternative to screen scraping). Under the Proposed Arrangement, this incentive may be reduced.

Interaction between the Proposed Arrangement and the CDR

115. An exposure draft of the Customer and Product Data Bill (**CPD Bill**) recently released in June 2023 sets out how the Government intends to establish a consumer data right regime in Aotearoa New Zealand. In summary, the Bill proposes to create a statutory right for consumers and small businesses to require entities holding their data to share that information with accredited third party services. Data holders within a designated sector will be required to put in place systems and processes that enable customer data to be shared in a standardised, machine-readable format via

APIs, to facilitate the transfer of that data to accredited requestors. The Government has decided that the first designated sector will be the banking sector.

116. Even if the CPD Bill is enacted, the factual described above is still likely to occur if the Proposed Arrangement is authorised because:
- (a) the proposed CDR regime is still being established, and Aotearoa New Zealand is likely at least a few years away from the enactment of the CPD Bill and the development of the necessary regulations for the designation of the banking sector as the first designated sector;
 - (b) there will be costs to implementing the CDR regime, and the Government has indicated that it intends to leverage existing initiatives or achieve economies of scale to reduce these costs, for example by utilising existing data standards developed in the banking sector.¹¹ Those costs may be reduced if the industry can rely on the accreditation scheme developed under the Proposed Arrangement to fast-track accreditation under the legislative regime;
 - (c) in relation to the accreditation scheme proposed under the Proposed Arrangement, Payments NZ expects that it will be a complementary framework to the accreditation framework under the proposed CDR regime, and will enable an accreditation scheme that is based on market need rather than minimum regulatory mandates. Alternatively, generic elements of the accreditation scheme may be adopted by the CDR regime as a baseline, and the scheme developed under the Proposed Arrangement may go beyond the CDR regime, reflecting that additional protections are required for the banking sector; and
 - (d) the proposed CDR regime does not cover the standard terms and conditions, or enable API Providers and Third Parties to agree to an arrangement to contract for the use of APIs on the standard terms and conditions.
117. In light of the above, an authorisation for the Proposed Arrangement would still be required for the industry to be able to progress the Project, even if a CDR regime was in force.

Interaction between the Proposed Arrangement and Commerce Commission Payments Between Bank Account initiative

118. The Commerce Commission issued a paper on 31 July 2023 titled "*Retail Payment System: Payments Between Bank Accounts*", which seeks views on a proposal by the Commission to use regulatory powers under the Retail Payment System Act 2022 to issue network standards for the designated network, or give directions about network rules.
119. Similarly to the above, Payments NZ considers that the likelihood that regulation will achieve the goals of the Project is uncertain. Given the stage of this proposed regulation (ie, a discussion document for proposed/potential regulatory change), Payments NZ does not expect that such regulation would overtake the process under the Proposed Arrangement in the factual. The potential regulation also relates only to payments (not account information). In addition, and as mentioned above, the proposed regulation would still not enable Standard Users to agree to an arrangement to contract for the use of APIs on standard terms and conditions.

¹¹ Cabinet Paper "Establishing a Consumer Data Right" (9 July 2021), paragraph 51 – <https://www.mbie.govt.nz/dmsdocument/15536-establishing-a-consumer-data-rightproactiverelase-pdf>

PART 4: MARKET DEFINITION

120. Payments NZ has considered market definition with reference to the services and activities that will be affected by the implementation of standardised APIs, as they set out the context for considering the relevant markets to the Proposed Arrangement.

Banking services

121. API Providers compete with each other to provide a range of banking, insurance, and financial planning services (**Banking Services**) to end customers.

122. The Commission has previously considered the markets relevant to Banking Services in its assessment of ANZ's application for clearance to acquire The National Bank. In its determination, the Commission considered that the following markets were relevant to Banking Services:¹²

- (a) the national retail supply of financial planning services;
- (b) the national retail supply of managed funds;
- (c) the national supply of domestic house and contents insurance;
- (d) the national supply of domestic motor vehicle insurance;
- (e) the national supply of commercial motor vehicle insurance;
- (f) the national supply of commercial property insurance;
- (g) the national supply of commercial liability insurance;
- (h) the national retail supply of personal loans;
- (i) the national retail supply of corporate banking;
- (j) the national retail supply of transaction accounts;
- (k) the national retail supply of mortgages;
- (l) the national retail supply of SME banking;
- (m) the national retail supply of rural banking;
- (n) the national retail supply of savings accounts;
- (o) the national retail supply of credit cards; and
- (p) the national retail supply of merchant acquiring services.

123. In each of the markets for Banking Services, API Providers collect information about customers, and their financial position, behaviours, and transaction details (**customer information**).

124. As set out in the Commerce Commission's preliminary issues paper for its personal banking market study, in addition to registered banks, there are also a range of licensed and/or certified non-bank businesses (such as non-bank deposit takers, and peer-to-peer lenders) that offer some Banking

¹² The Commerce Commission also considered the relevant markets included interbank trading markets (such as interbank trading in the foreign exchange, money, and bond markets), which Payments NZ does not consider are relevant to the Proposed Arrangement.

Services. Some Third Parties also compete to provide some Banking Services (eg, the ability to make payments and financial services).

Customer account data and payment initiation services

- 125. API Providers and other parties such as screen scrapers provide access to customer account data and/or initiation of certain actions (eg, sending payment instructions).
- 126. To provide open banking services, Third Parties require access to customer account data and/or payment initiation services from a number of different API Providers in relation to a range of Banking Services. They therefore need to contract with API Providers to acquire the customer information/payment initiation services via APIs, or use other methods such as screen scraping.
- 127. As mentioned, API Providers can, and will, be Third Parties. The provision of customer account data and payment initiation services can therefore include the provision of data/services from one API Provider to another.
- 128. While the Commission has not considered the relevant markets in this area, we submit that there will be a national market for the supply of customer account data and payment initiation services. For the purposes of the market definition, the market has two sides – the provision of customer account data or the receipt of instructions, and the acquisition of that information or provision of instructions by Third Parties.

Downstream services

- 129. Third Parties and API Providers also compete, or will compete, with each other to provide a range of services, including:
 - (a) the supply of account information services directly to end customers (for example, budgeting services, bill / expense monitoring services); and
 - (b) the supply of payment initiation services directly to end customers (for example, making payments on end customers' behalf, or making it easier or more flexible for customers to make payments from different accounts).

Summary of markets

Affected markets	Description	How competition works in the market
The provision of Banking Services to end customers	API Providers compete with each other for customers for any or all of the Banking Services. A customer generally uses the Banking Services of a limited number of API Providers (and in many cases, only one). Accordingly, the provision of banking services is a relevant market to consider because the introduction of APIs to this market will affect the ease with which customers can switch providers of Banking	We understand that the Commission is familiar with the nature of competition in the provision of Banking Services in New Zealand, having assessed how competition works in the relevant markets as part of its decision to approve ANZ's acquisition of The National Bank in 2003 and as a result of its ongoing market study into the personal

Affected markets	Description	How competition works in the market
	<p>Services, and integrate Banking Services from multiple providers.</p> <p>The provision of Banking Services involves API Providers generating, collecting, storing, and using customer information. That information is relevant for the purposes of considering impacts on account information services.</p> <p>The provision of Banking Services also involves API Providers using the customer information above to effect transactions, which is relevant to considering impacts on payment processes.</p> <p>As outlined in paragraph 124 above, API Providers also compete with other non-bank businesses (including some Third Parties) to provide some Banking Services.</p>	<p>banking services sector in New Zealand.</p> <p>A high level overview of how competition works in the Banking Services markets is as follows:</p> <ul style="list-style-type: none"> • There are four broad different types of customers of Banking Services: personal customers, business customers (small and medium enterprises), rural customers, and corporate customers (large firms and institutional customers). The types of services offered are set out in paragraph 122 above (eg, transaction and savings accounts, personal loans, and credit cards for personal customers). • API Providers compete with other API Providers, other banks that are not API Providers (such as Rabobank and SBS), and other non-bank deposit takers (eg, credit unions and building societies). In some areas, they also compete with other non-bank competitors like speciality financial services companies, fintechs, fund managers, investment platforms, and other non-bank lenders or brokers. • Competition to secure customers for the wide range of Banking Services is driven by customers engaging in the markets and seeking the most attractive offers on price and other terms. Customers obtain information

Affected markets	Description	How competition works in the market
		<p>about offers in different ways, including directly from banks, from bank advertising campaigns, through brokers, and using comparison sites.</p> <ul style="list-style-type: none"> • Competitors in the Banking Services market compete to gain new customers and retain existing customers through pricing, service offerings, quality, ongoing product development and other innovations, as well as the strength of the provider's brand, advertising, and business development activity.
The provision of customer account data and payment initiation services	<p>This market relates to the provision and acquisition of customer account data (and provision and receipt of payment initiation instructions).</p> <p>Third Parties typically require customer information from a number of different API Providers, and potentially in relation to a range of Banking Services, to provide Open Banking Services to end customers (see below). Bespoke and proprietary APIs, along with non-API methods (eg, screen scraping, reverse engineering banking app access, and bulk file processing like payroll) have been widely used.</p> <p>If the terms and conditions on which Third Parties acquire customer account data or payment initiation services from API Providers make it difficult or expensive for Third Parties to access the information/services, then this may impact the provision of the services (and ultimately, to end customers). It may also mean that</p>	<p>Third Parties need customer account data and/or payment initiation services in order to provide Open Banking Services. This could be directly from API Providers through standardised or bespoke APIs, or other methods (which have been described by the Commerce Commission as suboptimal)¹³ such as screen scraping and reverse engineering banking app access.</p> <p>With the Proposed Arrangement, accredited Third Parties could also compete in this market by acting as an aggregator or intermediary.</p> <p>The nature of competition relating to the provision and acquisition of customer information and payment initiation services is based on factors such as price, reliability, security, customer experience, scope of services offered, speed to market and bank coverage / access.</p>

¹³ Commerce Commission *Retail Payments System: Payments Between Bank Accounts* at Chapter 3.

Affected markets	Description	How competition works in the market
	<p>alternatives to APIs are used, such as screen scraping.</p> <p>This market will also involve:</p> <ul style="list-style-type: none"> • API Providers contracting with other API Providers for access to customer account data and payment initiation services, given that API Providers can also be Third Parties; and • Third Parties contracting with other Third Parties, where a Third Party that has access to an API Provider's API Services provides aggregated Open Banking Services. 	<p>Competition by Third Parties to gain access to customer account data and payment initiation services is based on factors such as having the resources to negotiate bilateral arrangements with API Providers. Given customer information plays a critical role in the Open Banking Services that Third Parties are able to offer, a Third Party's ability to access customer information – for example, their ability to negotiate and/or willingness to accept terms and conditions of API Providers or whether they have the scale and scope to have different terms and conditions with various API Providers – will enable them to "compete" for customer information more effectively.</p>
<p>The provision of Open Banking Services to end customers</p>	<p>This market comprises the downstream services that Third Parties (including API Providers that are Third Parties) will offer to end customers (Open Banking Services), such as account information services (like account aggregation, wealth management tools, spending insights, and assessments for loan suitability), and payment initiation services.</p> <p>Improved access to customer information, which will be facilitated by the Proposed Arrangement, will enable Third Parties to provide more secure and efficient services to customers, and a more extensive range of Open Banking Services.</p>	<p>As above, open banking is a new and developing industry, and the nature of competition among Third Parties in providing Open Banking Services is developing. Technology, innovation, security, accessibility, ease of use, and pricing are all factors that are likely to play a role in whether a Third Party is competitive, but ultimately its competitiveness derives from its access to customer information. A lack of access to customer information will impact the ability for Third Parties to provide Open Banking Services and the quality of those services.</p>

PART 5: COUNTERFACTUAL

The bilateral model

130. In the counterfactual:
- (a) API Providers would control access to the APIs; and
 - (b) API Providers and Third Parties would contract with one another using a bilateral model – ie, each API Provider contracts with each Third Party individually.
131. The bilateral model would require each API Provider, before partnering with a Third Party, to determine the level of risk presented by a Third Party's connection to the API Provider's system.
132. Following this, each API Provider would set requirements / criteria for partnering with a given Third Party. The criteria would be based on each API Provider's policies about the level of risk it is willing to accept by granting access to particular Third Parties.
133. To determine whether a Third Party that seeks access to an API meets the criteria set by the API Provider, the API Provider would need to understand how the API will be used (the **use case**) by the Third Party. This typically requires a Third Party to provide the use case (which is of significant commercial value to a Third Party) to the API Provider, who may, in some cases, be a competitor of the Third Party. In addition, Third Parties face costs in meeting the criteria set by API Providers, which vary as between different API Providers.
134. Feedback received from Third Parties in 2021 indicated that API Providers have been taking a risk averse approach to partnering with Third Parties in order to minimise reputational, regulatory, and operational risks to themselves. This has meant that Third Parties are assessed by API Providers as having a higher level of risk than Third Parties consider is proportionate to the actual risk. In the counterfactual, this would remain an issue as there would not be any standardised criteria available to assure an API Provider of a Third Party's reliability, security and risk.
135. Once an API Provider has determined that a Third Party meets its criteria, the parties will proceed to enter into a service agreement. The terms of service agreements are subject to negotiation. Both parties therefore incur costs in negotiating and finalising agreements.
136. An API Provider may be unable to enter into partnering arrangements efficiently due to the demand from Third Parties, where each agreement needs to be separately negotiated and agreed, or may subject a Third Party to additional criteria and costs that threaten the Third Party's viability (which may result in the Third Party opting not to partner).
137. Given the arrangements described above, in the counterfactual an API Provider could choose not to partner with any Third Party based on its own risk requirements or business strategy, which may not be consistent with other API Providers. Ultimately, in the counterfactual, the existing issues with the lack of consistency in the bilateral model (outlined at paragraph 77) would continue.

Alternatives to the Proposed Arrangement

138. In the counterfactual, alternatives to open banking would continue to exist (and potentially develop further). Those alternatives are described in the Commission's *Payments Between Bank Accounts* paper (and are described as "suboptimal" access methods).

139. In short, other services that work without contracted access to APIs, such as screen scraping or reverse-engineered bank app access, enable users to achieve similar outcomes to open banking, and may continue to be available. It is possible that such services could be banned if CDR legislation is enacted, or through regulation as proposed in the *Payments Between Bank Accounts* paper.
140. Those alternatives are used by a number of large companies in Aotearoa New Zealand, including large retailers and airlines.¹⁴ However, as previously stated, the Commission has acknowledged that access through these methods is suboptimal.
141. Bespoke APIs that are developed by banks for use for a particular payment provider are also an alternative to the Proposed Arrangement, but they face many of the same problems as the current API landscape (in that arrangements between the bank and payment provider must be negotiated individually, and there can be significant costs in doing so).
142. Electronic credit and direct debit payments also work without using APIs, and would continue to be an alternative to payment initiation.
143. Outside of those offerings, and within the API Centre, Payments NZ would continue to offer its existing optional services to Standards Users:
 - (a) the due diligence service; and
 - (b) the template bilateral agreement.
144. The due diligence service and the template bilateral agreement were created to attempt to deliver some consistency across API access arrangements, and facilitate API Standards Users entering into partnerships to bring innovations to market more simply and quickly, but without agreement between competitors.
145. The due diligence service was intended to streamline the process of bilateral partnering. It involves a Third Party completing a questionnaire that is intended to capture as much base information as possible that an API Provider may need to enable it to undertake due diligence as part of its partner onboarding processes (and to reduce the level of duplication involved when a Third Party needs to supply similar information to multiple API Providers). The API Provider then considers the responses and information provided before deciding whether to partner with the Third Party.
146. Payments NZ would also continue to make available a template bilateral agreement to Standards Users (which would remain optional to use). The template bilateral agreement is attached as Confidential Appendix 12. In the counterfactual, it could be used to form the basis of the bilateral contract between an API provider and a Third Party.
147. The template bilateral agreement would still be intended to be a template only, and parties would need to negotiate and agree to add further clauses or amend clauses in the template. In addition, parties would also need to agree some matters that are not specified in the template (such as pricing, intellectual property, service levels, security measures, and liability).
148. The template agreement would go some way to achieving more efficient partnering, by acting as an educational tool that can be used as a starting point for partnering, particularly for new Third Party

¹⁴ Commerce Commission *Retail Payments System: Payments Between Bank Accounts* at [3.26].

entrants. In addition, the template could signal to Third Parties the types of security, safety, and liability measures that API Providers would consider appropriate.

149. However, the current template agreement (which is directed at those same objectives) is not well used because many of the key elements of the agreement, such as commercial terms, liability and indemnity provisions, and security measures, need to be separately negotiated and agreed, and Payments NZ expects that this would continue in the counterfactual. The same issues with a lack of consistency as to the terms agreed would also continue.
150. Accordingly, in the counterfactual, partnering arrangements would not be able to be done at scale because they are not easily replicated. The API Centre has assessed all opportunities and, in the counterfactual, is unlikely to deliver any other initiatives that could facilitate more efficient partnering without the need for authorisation.

Impact of CPD Bill

151. In addition, in the counterfactual, the consumer data right may exist in New Zealand law, if the CPD Bill is enacted. As outlined above, the likely timeframe for that to occur, and the scope of what the Bill (and associated regulations and standards) may cover, is uncertain at this stage. However, the responsible agency for the Bill (the Ministry of Business, Innovation and Employment (**MBIE**)) has indicated that it would seek to draw on any standards set by industry when making standards under the new law.
152. It is also not clear whether the Bill, regulations, and standards, would achieve all of the objectives that Payments NZ is hoping to achieve by standardising accreditation criteria and terms and conditions for API Services. In particular, at this stage, the draft CPD Bill does not elaborate on common terms for access to APIs, or the expected service levels that are required in the banking sector. Payments NZ has high thresholds for performance and availability that are not shared with the expected performance or availability of, for example, the health, energy or telecommunications sectors. That is, even with a CDR framework in the law, Payments NZ would still be seeking to pursue the Project.

Impact of Commerce Commission Payments Between Bank Accounts initiative

153. As set out above in relation to the factual, the paper proposes regulation that could require API providers to disclose information about their terms and conditions for partnering, pricing methodologies, or establish a regime for access to the interbank payment network.
154. The certainty and timing of this process is unknown. In addition, it is also not clear that the Retail Payment System Act (which is limited to the retail payment system, being networks that facilitate payments by a consumer to a merchant) could be used to achieve all of the benefits that could result from the Proposed Arrangement.

PART 6: PUBLIC DETRIMENTS AND BENEFITS

Detriments

155. The most important aspect of the need for authorisation of the Proposed Arrangement is the risk of it involving cartel conduct. This is fully set out in the section of this application relating to the Commission's jurisdiction to grant authorisation.
156. The net effect of the Proposed Arrangement, if authorised, on competition is that it will positively impact competition in relevant markets as set out in the Benefits section below.
157. However, as also discussed in the jurisdiction section above, there are at least theoretical effects on competition:
- (a) Standards Users who participate in the development of the accreditation criteria and standard terms and conditions will inevitably get some degree of insight into their competitors' business strategies. It is submitted that this will be limited, but it will be possible for Standards Users to infer, from the positions taken by others in relation to matters that arise, how their competitors might approach aspects of their businesses. This applies as between API Providers and as between Third Parties as well as between both API Providers and Third Parties (as API Providers and Third Parties compete or will compete with each other to provide banking services and open banking services as well as access to customer account information and payment initiation services, as discussed in paragraph 111 and the market definition section above); and
 - (b) the Proposed Arrangement could be characterised as having the potential to dampen the incentive of API Providers to innovate in relation to the criteria they adopt for partnering, and the interrelated issue of the terms and conditions they use to facilitate partnering while managing their risk. For example, API Providers have incentives to offer/negotiate terms to grow third party relationships that will benefit their business (eg, through achieving a return on investment and customer benefit protections) and their customers (eg, protections through offering an alternative to screen scraping). Under the Proposed Arrangement, these incentives may be reduced.
158. Those detriments could arise shortly after authorisation is granted (ie, once the Working Group discussions start). For example, if authorisation is granted by the end of February 2024, the detriments could arise as soon as March 2024.

Benefits

159. The Commission must authorise an agreement where it is satisfied that the agreement will be likely to result in a benefit to the public that would outweigh the lessening in competition.¹⁵
160. The Proposed Arrangement will directly benefit the API Centre and Standards Users, to make partnering more frequent, and easier. However, the impact of the accreditation criteria and default standard terms that are agreed, and implemented, under the Proposed Arrangement, will result in benefits to the public more generally by changing the landscape to facilitate more open banking in Aotearoa New Zealand. While methods of obtaining access to customer account data and payment

¹⁵ Commerce Act, section 61.

initiation services like screen scraping are likely to continue for some time, the Proposed Arrangement will provide increased and more secure alternatives to those methods.

Benefits for the API Centre and Standards Users

161. The Proposed Arrangement is likely to facilitate a more well-utilised, secure, and innovative open banking framework in Aotearoa New Zealand, on the basis that it is expected to mitigate the ongoing difficulties with bilateral partnering, which are currently barriers to open banking in Aotearoa New Zealand.
162. In addition, it will allow the API Centre to continue in its role as leading Aotearoa's open banking future by developing an accreditation framework and standard terms and conditions that are fit for purpose, and which will facilitate increased uptake of partnering between Standards Users.
163. The Proposed Arrangement is expected to result in an increase in the number and variety of Third Parties that can partner with API Providers and an increase in the variety of use cases – this will benefit the industry, and Aotearoa New Zealand, by ensuring that all Standards Users have equivalent access to the ecosystem to provide services to consumers.
164. More specifically, the Proposed Arrangement is expected to produce standardisation of the accreditation criteria and terms and conditions, which would:
 - (a) mitigate the issues arising from the lack of consistency in arrangements compared with the counterfactual;
 - (b) reduce costs for partnering for Standard Users;
 - (c) provide a more level playing field on which Third Parties can compete;
 - (d) provide a more secure way for Third Parties to access customer account data and payment initiation services than methods such as screen scraping, which reduces security risks and customer protection risks for Third Parties; and
 - (e) in turn, increase the number of Third Parties who use API Services.
165. Transparency of any issues that Third Parties have in partnering with API Providers will also increase, as Third Parties will not face the same concerns in the factual compared with the counterfactual that raising complaints about an API Provider will result in access to APIs being refused. That is, in the factual, Third Parties will be able to confidently advocate for changes to the ecosystem without the fear that this could result in an API Provider refusing to contract with them.
166. Even if the parties to the Proposed Arrangement cannot reach consensus on standard terms and conditions, or the accreditation criteria, Payments NZ submits that there will still be benefits in the process of trying to reach consensus. This is because the discussions will contribute to identification of issues (some of which may be able to be resolved), which would accelerate the maturity of the API ecosystem overall. This benefit would accrue in 2024, as part of the Working Group process.

Benefits for consumers

167. The benefits described above will flow through to consumers in the form of open banking, which will:

- (a) allow Third Parties to offer, and customers to use, a wider variety of Open Banking Services compared with the counterfactual;
 - (b) encourage competition between Third Parties offering Open Banking Services, which may improve innovation;
 - (c) encourage competition between API Providers and Third Parties, which may result in benefits for consumers in the form of innovative services or financial benefits;
 - (d) make information about banking services, and the offerings from different banks, more accessible to customers; and
 - (e) improve the ease with which customers can use banking services from multiple banks.
168. The benefits of open banking (including for competition and innovation) are difficult to quantify, but are widely recognised and accepted. For example, the Commerce Commission's paper "*Retail Payment System: Payments Between Bank Accounts*" (July 2023) recognises the link between open banking and innovation in areas such as options to make bank transfers. The Commission states that the best environment to support innovation in options to make bank transfers is one where open APIs are easily accessible to payment providers on fair and reasonable access terms and conditions, and that this would require all banks to engage with payment providers through an efficient partnering process, including reasonable access terms and conditions which increase certainty for relevant users. This is consistent with the purpose and expected benefits of the Proposed Arrangement. Paragraphs 4.3 to 4.7 of the Commission's paper also sets out the long-term benefits to merchants and consumers from the development of innovative options to make bank transfers.
169. Similarly, policy documents relating to the CPD Bill acknowledge the benefits of open banking. For example, the *Regulatory Impact Statement: Establishing a consumer data right* (June 2021) states:
- While quantitative evidence on the overall impact of the Open Banking initiative is unknown, the UK Financial Conduct Authority estimated that a 2013 initiative, which facilitated switching between current accounts resulted in a 22 per cent increase in the number of current account switches when compared with the predecessor system. After the commencement of the enabling legislation and regulations in 2017, it was reported that more than 170 third parties had registered for the scheme. In its first year of implementation, open banking in the UK was supported by USD \$3.3 billion of equity investments in FinTech companies in 2018. [footnotes omitted]*
170. Further evidence of the benefits of open banking from the UK include:
- (a) A recent report, *Recommendations for the next phase of open banking in the UK*, states that over 7 million consumers and businesses, of which 750,000 are SMEs, use open banking enabled products and services. Open banking payments have more than doubled, with over 68 million open banking payments in 2022 (up from 25 million in 2021) and over a billion successful API calls a month (since May 2022).¹⁶

¹⁶ *Recommendations for the next phase of open banking in the UK* (April 2023), Joint Regulatory Oversight Committee: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1150988/JROC_report_recommendations_and_actions_paper_April_2023.pdf.

(b) The UK HM Revenue & Customs estimated in 2022 that their adoption of open banking had saved the public purse over £500k in bank fees with more than £10.5bn in tax collected to date through open banking payments, demonstrating the efficiencies this new capability can deliver.¹⁷

171. The benefits of the Proposed Arrangement for consumers are expected to start to arise from late 2024 or early 2025. Once the accreditation scheme and default standard terms and conditions have been set, and the four largest banks are required to have standardised APIs technically and operationally ready for use by Third Parties, the benefits outlined in paragraph 167 will accelerate.

172. Even if the parties to the Proposed Arrangement cannot reach consensus on standard terms and conditions, or the accreditation criteria, as outlined above, Payments NZ submits that there will still be benefits to consumers as a result of the process of trying to reach consensus. This is because the discussions will contribute to identification of issues (some of which may be able to be resolved), which would accelerate the maturity of the API ecosystem overall and contribute to the development of open banking in Aotearoa New Zealand by informing the development of regulatory regimes such as under the CPD Bill. This benefit would accrue in 2024, as part of the Working Group process.

For CPD Bill

173. The CPD Bill is progressing in the background of the Project, and will likely continue throughout an application for authorisation.

174. The Proposed Arrangement would result in a framework that would be able to co-exist alongside the requirements implemented under the CPD Bill, and would be more adaptive to future growth based on market need.

175. It is expected that the CPD Bill will deliver an accreditation framework for regulated APIs, and that under the Proposed Arrangement, the API Centre will have a complementary framework for industry-led APIs. However, the timeframes for implementation of regulation under the CPD Bill, and the nature and extent of that regulation, are unknown.

176. The Ministry and previous Minister responsible for the CPD Bill supported the API Centre developing an industry framework. The Minister for Commerce and Consumer Affairs called a meeting of interested stakeholders (including the Payments NZ Chief Executive) on 29 June 2023 to discuss key aspects of the exposure draft of the CPD Bill. Following that meeting, the Minister wrote to Payments NZ further emphasising the priority of implementing the Consumer Product and Data Bill. In that letter he said:

"I ask that you continue to progress the industry-led work on open banking... 'I consider that access to APIs should be prioritised, as progress in this area is important to enable innovation and protect consumers. I encourage you to continue exploring options for resolving these barriers with my officials or the Commerce Commission'."

¹⁷ <https://www.globalgovernmentfintech.com/hmrc-open-banking-rollout-takes-in-24-more-tax-types/> and *The Future Development of Open Banking in the UK* (February 2023), Final report for the Joint Regulatory Oversight Committee: <https://www.openbanking.org.uk/wp-content/uploads/SWG-Report-The-Future-Development-of-Open-Banking-in-the-UK-Feb-2023.pdf>.

177. MBIE has also expressed that its intention is that the secondary legislation will build on industry-led work. If the Proposed Arrangement can proceed pursuant to an authorisation, this may help to clarify the policy context for any further regulation.

Weighing of detriments and benefits

178. Although details of the accreditation criteria and default standard terms and conditions are still to be developed, it is clear that the lessening of competition that will result from the Proposed Arrangement will clearly be outweighed by the significant public benefits that arise from the timely development of open banking services in Aotearoa New Zealand.

PART 7: IDENTIFICATION OF INTERESTED PARTIES

179. The contact details of likely interested parties are set in Appendix 08.

PART 8: CONFIDENTIALITY

180. Confidentiality from the public is sought for the information in Appendix 08 included in square brackets and highlighted, and for Confidential Appendices 05, 11, 12, and 13.
181. A public version of this notice with confidential information deleted will be provided to the Commerce Commission.
182. Payments NZ requests that it be notified of any request made under the Official Information Act 1982 for the confidential information included in this application, and be given the opportunity to be consulted as to whether the information remains confidential at the time that the request is made.
183. These requests for confidentiality are made because the information:
 - (a) contains commercially sensitive information and disclosure would be likely to unreasonably prejudice the commercial position of Payments NZ or, alternatively, the person who is the subject of or who provided the information; and
 - (b) includes personal information about individuals, which should be withheld to protect the privacy of natural persons.
184. A schedule setting out the reasons for each request is attached as Confidential Appendix 13.

DECLARATION

I, Steve Wiggins, Chief Executive of Payments NZ, have prepared, or supervised the preparation of, this notice seeking authorisation.

To the best of my knowledge, I confirm that:

- all information specified by the Commission has been supplied;
- if information has not been supplied, reasons have been included as to why the information has not been supplied;
- all information known to Payments NZ which is relevant to the consideration of this notice has been supplied; and
- all information supplied is correct as at the date of this notice.

I undertake to advise the Commission immediately of any material change in circumstances relating to the notice.

I understand that it is an offence under the Commerce Act to attempt to deceive or knowingly mislead the Commission in respect of any matter before the Commission, including in these documents.

I am an officer of Payments NZ and am duly authorised to submit this notice.

Name and title of person authorised to sign:

Steve Wiggins, Chief Executive

Sign:

Date: