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Retail Payment System

Consultation on our proposal to
recommend designation of the
interbank payment network



Associated documents

Publication date	Reference	Title
22 February 2024		Update on our Payments Between Bank Accounts work
31 July 2023	ISBN no. 978-1-991085-30-6	Request for views on payments made over the interbank payment network

Glossary

Term	Definition
The Act	Retail Payment System Act 2022.
API	An Application Programming Interface (API) is a set of routines, protocols, and tools for building software applications. An API specifies how software components should interact.
API Provider	An API Provider refers to a registered bank or non-bank deposit taker that provides APIs to a payment provider. In this paper, the terms API Provider and bank are used interchangeably.
Automatic payment	A type of interbank payment instrument. An automatic payment is an instruction from the consumer to their bank to pay a fixed amount at a regular frequency from the consumer's nominated bank account to another bank account.
BECS	The Bulk Electronic Clearing System (BECS) governs how a range of bulk electronic transaction types are made between its participants. It governs how direct debits, automatic payments, bill payments, and direct credits work.
Bill Payment	A type of interbank payment instrument. A bill payment is a one-off payment similar to a direct credit but with additional functionality. This functionality helps to link the consumer's payment with their biller account and to support the biller's reconciliation.
Commission	The Commerce Commission.
Consumer	A person (including any individual or business) that acquires good or services from a merchant.
Consumer Data Right (CDR)	A legal framework that requires businesses that hold data (data holders) to share prescribed data that they hold about customers (customer data) with trusted third parties (accredited requestors) with the consent of the customer and otherwise described in this paper as the Consumer and Product Data Bill.
Designated network	Means any retail payment network that is: (a) declared to be a designated retail payment network under subpart 1 of Part 2 of the Act; or (b) designated under an initial designation of the Act.
Designation order	The order in council made by the Governor General declaring a retail payment network to be a designated network.
Direct credit	A type of interbank payment instrument. A direct credit is an instruction sent from the consumer to their bank to make a one-off payment from the consumer's nominated bank account to another party's bank account or other parties' bank accounts.
Direct debit	A type of interbank payment instrument. A direct debit enables another party (the initiator), once authorised, to take payments from the consumer's nominated bank account electronically.

Direction	Means a direction of the Commission under subpart 3 of Part 2 of the Act in relation to network rules.
Electronic credit (other)	Other types of interbank payment instruments. This is composed of POS, social welfare, automatic teller machine (ATM), foreign exchange, and money market.
Interbank payment network	See Chapter 4 paragraph 4.2.
Five largest banks	Means ANZ Bank New Zealand Limited, ASB Bank Limited, Bank of New Zealand, Kiwibank Limited, and Westpac New Zealand Limited.
Merchant	A supplier (within the meaning of the Fair Trading Act 1986) of goods or services to consumers. In this paper, we have used merchant and business interchangeably.
Minister	Minister of Commerce and Consumer Affairs.
Network	Means a retail payment network.
Network operator	In relation to a retail payment network, means any person that is or does 1 or more of the following: (a) is wholly or partly responsible to the participants (or any of them) for the network rules: (b) operates or manages the network or the core infrastructure of the network.
Participant	Means a person that is a network operator or any other service provider.
Partnering	The arrangement between a bank and a third party for access and use of a bank's APIs.
Payment	Means a transfer of monetary value.
Payment method	Means the form in which a consumer makes or is able to make a retail payment (for example, using a card online or without contact in person).
Payment product	Means a class of retail payment within a retail payment network (for example, personal or commercial retail payments within a retail payment network).
Retail payment	Means a payment by a consumer to a merchant for the supply of goods or services.
Retail payment network	Means the participants, arrangements, contracts, and rules that facilitate a class of retail payment.
Retail payment system	Means the system comprising all retail payment networks.
SBI	Settlement before interchange (SBI) is a payment settlement and interchange system used by Payments New Zealand's BECS and consumer electronic clearing system (CECS) participants (primarily banks).

Standard	Means a network standard or a merchant surcharging standard.
Third party	Third parties are organisations that want to use standardised API endpoints provided by registered API Providers. In this request for views paper we consider banks may also want to be third parties and offer API enabled products and services themselves to their customers or prospective customers.

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Executive summary

- X1 The Commission has powers and functions under the Retail Payment System Act 2022 (the Act). The purpose of the Act is to promote competition and efficiency in the retail payment system and it:
- X1.1 provides for the regulation of participants in retail payment networks (including via initial designations and an initial pricing standard);
 - X1.2 confers certain functions and powers on the Commission for that purpose, of which some apply to designated networks and others apply to all retail payment networks;
 - X1.3 enables the Commission to regulate fees charged in respect of certain payment services (for example, payment surcharges); and
 - X1.4 provides for investigation, monitoring, and enforcement by the Commission.
- X2 The Commission is considering recommending the use of one of the powers under the Act – to recommend that the Minister should designate the interbank payment network. The purpose of this paper is to consult with affected participants before the Commission makes any decision.
- X3 The interbank payment network is a significant part of the retail payment system. The interbank payment network is the largest retail payment network in New Zealand and involves all bank transfers, direct debits, and automatic payments amongst other payment instruments. The value of payments across the interbank payment network in 2023 was about \$1.75 trillion.¹
- X4 Designation of the interbank payment network provides an opportunity to increase competition and efficiency broadly across the retail payment system. It is generally accepted that a thriving Application Programming Interface (API) enabled ecosystem will provide new methods of making and receiving payments for consumers and businesses that will have significant benefits for them.
- X5 Those benefits include increased choice through more payment options, innovation through increased functionality, improved consumer protections, and increased uptake of innovative methods for consumers and businesses to make and receive payments to and from their bank accounts using third party services.

¹ Payments NZ “BECS Performance Dashboard” (December 2023). Note: data is 12-month rolling totals at December 2023. Note: \$1.75 trillion refers to interbank payments only and excludes intrabank payments.

- X6 We have seen API enabled payment ecosystems become increasingly prevalent overseas and we can see the same opportunities here in New Zealand.
- X7 There is significant unmet demand for a thriving API enabled payment ecosystem in New Zealand. Interbank payment network participants in New Zealand have made some effort to implement such an ecosystem. The Commission is concerned that in the absence of regulatory encouragement those industry efforts will not deliver the minimum requirements necessary for a thriving ecosystem in a timely way.
- X8 In particular, the Commission is concerned that:
- X8.1 A feature of the interbank payment network is that it is not only Payments NZ as an operator of the network, but the banks which must all collectively implement the ecosystem. The incentives to deploy a thriving API enabled payment ecosystem are mixed for banks.
- X8.2 There is a risk that a single large bank can use access arrangements and pricing as a barrier to inhibit the timeliness of widespread adoption.
- X8.3 The combination of these factors will lead to delay or uncertainty in the delivery of the minimum requirements for a thriving API enabled ecosystem. Not only would this reduce the significant benefits to merchants and consumers, but it is likely to affect future investment into the payment system which will further be detrimental to merchants and consumers.
- X9 The Payments NZ application to the Commission for Authorisation, which is a separate adjudicative process under the Commerce Act, does not fully address the above concerns. Any Authorisation (if granted) would only allow the participants to collaborate on the development and implementation of accreditation criteria, and standard terms and conditions for users of the interbank payment network. Any Authorisation would not set rules or criteria for the timely implementation of a thriving API enabled payment ecosystem.
- X10 The Commission's concerns, particularly around timely delivery, would not be resolved by the establishment of a Consumer Data Right (CDR) regime via the Customer and Product Data Bill. While the CDR will prioritise open banking, the Bill has yet to be introduced. We expect it will take some time after the Bill has passed before a banking designation comes into effect. We therefore do not believe it will resolve our concerns, particularly around timely delivery.
- X11 The Commission therefore has the preliminary view that designation of the interbank payment network is required to deliver the significant competition and efficiency benefits for consumers and merchants from the delivery of a thriving API enabled payment ecosystem in a timely way.

- X12 The Commission considers that a designation would be the minimum reasonable intervention required to:
- X12.1 encourage timely delivery and adoption of a thriving API enabled payment ecosystem;
 - X12.2 encourage lower barriers to partnerships between third party providers and the banks;
 - X12.3 ensure the financial sector is well placed to adopt the measures and standards to support the uptake of the CDR regime; and
 - X12.4 allow the Commission to intervene in future if necessary to promote competition and efficiency.
- X13 Designating the interbank payment network will not automatically impose any regulations or standards on participants. Instead, designation enables timely intervention should that prove necessary or desirable. Designation is a measured and appropriate way to support the timely delivery of a thriving open API ecosystem, particularly as designation would not require further direct intervention if industry delivers a thriving API enabled payment ecosystem in a timely way.
- X14 Following this consultation, if the Commission does decide to recommend designation, and if a designation order is then made, the Commission expects industry to continue to lead the development of a thriving API enabled payment ecosystem. The Commission anticipates that it would only use its regulatory powers further to the extent needed to ensure the delivery of such an ecosystem, including in a timely way. This could include requiring participation in industry designed solutions, or requiring changes to these solutions where they depart from what is required to promote competition and efficiency for the long-term benefit of consumers and merchants.

Chapter 1 Introduction

Purpose of this paper

- 1.1 The Commission is considering recommending to the Minister that the interbank payment network should be designated under the Act. Before making a recommendation to the Minister to designate a network, we must consult affected operators of the network about the proposed designation (including the Commission's reasons for proposing to make a recommendation).²
- 1.2 The Commission has previously sought feedback from affected operators. We issued a "Request for Views Paper" in July 2023 (the request for views paper). In that paper, we expressed a preliminary view that designation of the interbank payment network was necessary to complement industry's efforts and overcome barriers to the implementation of a thriving API enabled payment ecosystem.³
- 1.3 We have considered stakeholders' responses to the request for views paper and the available evidence. Our preliminary view remains that designation is required to promote competition and efficiency in the retail payment system and to complete the work that industry has already started.
- 1.4 This paper is the next stage in our consultation process and sets out:
 - 1.4.1 the legal framework and the designation process (Chapter 2);
 - 1.4.2 our reasons for considering that we should make a recommendation to the Minister to designate the interbank payment network, including the factors we have considered in reaching that view (Chapter 3);
 - 1.4.3 the terms of our proposed designation (Chapter 4); and
 - 1.4.4 the consultation questions (Chapter 5).
- 1.5 While we are only required to consult with affected operators of the network, we are interested in any feedback from other parties such as third party payments providers who are engaged with finding innovative ways for merchants and consumers to make and receive payments using the interbank payment network.

² Retail Payment System Act, s13(1)(b).

³ Commerce Commission "Retail payment system – Request for views on payments made over the interbank payment network" (31 July 2023): https://comcom.govt.nz/__data/assets/pdf_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf

- 1.6 The outcome of this consultation will inform our decision on whether to recommend designation of the interbank payment network, and the contents of any interbank payment network designation recommendation. We anticipate that the information you provide will assist us in determining:
- 1.6.1 whether designation would help to achieve the purpose and principles of the Act;
 - 1.6.2 if we consider that designation is necessary, a clearer understanding of what any designation that gives effect to the purpose of the Act should look like; and
 - 1.6.3 richer information on opportunities to promote competition and efficiency in the retail payment system.
- 1.7 This consultation relates to the potential recommendation to designate the interbank payment network only. However, please feel free to provide any comments on the potential use of our regulatory powers or functions that you consider to be relevant to any recommendation to designate the interbank payment network.

Our work to date on 'payments between bank accounts'

Our July 2023 request for views paper

- 1.8 The request for views paper sought feedback on how we can better promote new payment options that allow consumers to make payments between bank accounts, and how we could use our regulatory powers to lower potential barriers.
- 1.9 A key area we tested in the paper was our view of the requirements necessary to enable this environment. In that paper we consider that while industry had put in a lot of work to create the environment that would promote these new payment options, they have not delivered these requirements within a satisfactory timeframe.
- 1.10 We proposed that we could use our regulatory powers by way of a designation of the interbank payment network to create incentives on industry, particularly the banks, to deliver all of these requirements.

- 1.11 The submissions received on this paper and stakeholder engagement have helped to develop our thinking on whether to move forward with the process of recommending the 'interbank payment network' for designation.⁴ A summary of submissions relevant to this consultation are set out at Attachment A to this paper.

Our recent "open letter"

- 1.12 On 22 February 2024 we published an update on this work (the open letter). The open letter set out our:
- 1.12.1 intention to move forward with this consultation;
 - 1.12.2 revised view of the minimum requirements for a thriving API enabled payment ecosystem; and
 - 1.12.3 expectations on banks, Payments NZ and the API Centre. We note that this consultation paper does not replace the expectations in that letter but complements them.

Confidentiality

- 1.13 We intend to publish all submissions on this consultation paper.
- 1.14 The protection of confidential information is something the Commerce Commission (the Commission) takes seriously. If you provide us with a confidential submission, we request an explanation of the reason for the claim of confidentiality.
- 1.15 When including confidential information in your submission:
- 1.15.1 Please provide clearly labelled confidential and public versions. We intend to publish all public versions on our website.
 - 1.15.2 The responsibility clearly marking confidential information that is not included in a public version of a submission rests entirely with the party making the submission.
 - 1.15.3 Please note that all submissions we receive, including any parts that we do not publish, can be requested under the Official Information Act 1982 (OIA). This means we would be required to release material that we do not publish unless a good reason existed under the OIA to withhold it. Should there be an OIA request, where practical, we would consult with you first before providing our response.

⁴ Submissions on our Request for views paper available at <https://comcom.govt.nz/regulated-industries/retail-payment-system?target=documents&root=332775#projecttab>

Information for interested parties on making a submission

- 1.16 We are seeking your feedback on this paper by 4pm Friday 10 May 2024. We are accepting written submissions and submissions through our dedicated SurveyMonkey [form](#).
- 1.17 We welcome requests to meet to discuss any aspects of this paper and we are also open to conducting facilitated feedback sessions with stakeholder groups to provide an alternative format to receive feedback which:
- 1.17.1 may be on an anonymous basis;
 - 1.17.2 should relate directly to the proposed designation; and
 - 1.17.3 where we have previously consulted with you, presents new or novel considerations.
- 1.18 Please contact us if you think either of these options would be beneficial.
- 1.19 Once we have reviewed the submissions, there are two paths we could take:
- 1.19.1 stop this work if we consider interbank payment network designation under the Act is not required at this point; or
 - 1.19.2 proceed with recommending an interbank payment network designation under the Act to the Minister.
- 1.20 Please contact Kimberley Foo (Payment Regulation and Engagement Manager, Market Regulation) at PaymentsTeam@comcom.govt.nz if you have questions in relation to this consultation process.

Chapter 2 Legal Framework and Designation

The purpose of the Retail Payment System Act and the Commission's functions and powers

- 2.1 The Act came into force in November 2022 and created new laws for the designation and the regulation of retail payment systems.
- 2.2 The purpose of the Act is to promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand.^{5 6}
- 2.3 The Act gives the Commission a range of functions and powers, including:
- 2.3.1 recommending a network is designated;⁷
 - 2.3.2 regulation of the designated network(s) (including their participants) through network standards and/or directions;⁸
 - 2.3.3 issuing merchant surcharging standards;⁹
 - 2.3.4 market monitoring and information dissemination; and¹⁰
 - 2.3.5 investigating, compliance monitoring and enforcement.¹¹
- 2.4 The Commission's functions and powers are limited and must be exercised for the purpose of promoting competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand.¹²
- 2.5 To the extent that the Commission considers them relevant, we must also consider the following principles when exercising our functions and powers:¹³

⁵ Retail Payment System Act, s 3.

⁶ In this paper, we use the terms “businesses” and “merchants” interchangeably and these terms include entities such as the Crown, individuals, and sole traders.

⁷ Retail Payment System Act, s 12.

⁸ Retail Payment System Act, s 17.

⁹ Retail Payment System Act, s 30.

¹⁰ Retail Payment System Act, s 6(a) and (c).

¹¹ Retail Payment System Act, s 6(b) and (d).

¹² Retail Payment System Act, s 4(1).

¹³ Retail Payment System Act, s 4(2).

- 2.5.1 merchants and consumers should pay no more than reasonable fees for the supply of payment services; and
- 2.5.2 the retail payment system provides a reasonable degree of transparency.

Retail payment networks and the participants

- 2.6 A retail payment network means all the participants, arrangements, contracts, and rules that facilitate a class of retail payment. A retail payment is the transfer of monetary value by a consumer to a merchant for the supply of goods and services.¹⁴ Merchants and consumers can be people, businesses or other entities, the definitions relate to their role in the supply of goods or services. A consumer is a person (including any individual or business) that acquires good or services from a merchant.
- 2.7 A person is a participant of a retail payment network if they are either a:
 - 2.7.1 **Network operator** – a person that is wholly or partly responsible to the participants (or any of them) for the network rules and or operates or manages the network or the core infrastructure of the network, or
 - 2.7.2 **Service provider** – that provides or facilitates the provision of payment services in the network (for example, a payment or an infrastructure service provider), but does not include a merchant. This includes any infrastructure that is necessary for the provision of the network's payment services.

Designation of a retail payment network under the Retail Payment System Act 2022

- 2.8 The Commission may recommend to the Minister that a retail payment network (such as the interbank payment network) be designated.¹⁵ This is the first time the Commission has considered recommending the designation of any retail payment network under the Act.
- 2.9 The Minister is not required to accept any recommendation made by the Commission. If the Minister accepts the recommendation, the Minister may then recommend to the Governor-General that the retail payment network be designated. It is for the Governor-General to, on the recommendation of the Minister, make an Order in Council declaring a retail payment network to be a designated network.

¹⁴ Services includes the supply of goods or the performance of work under a contract of service.

¹⁵ Retail Payment System Act, s 12.

The mandatory considerations before recommending a designation

- 2.10 In deciding whether to make a recommendation to designate under the Act, the Commission must consider the following:
- 2.10.1 any features of the retail payment network, or any conduct of participants in the network, that reduce, or are likely to reduce, competition or efficiency;¹⁶
 - 2.10.2 the nature of the network, including the number, value, and nature of the transactions that the network currently processes or is likely to process in the future; and¹⁷
 - 2.10.3 the Financial Market Infrastructures Act 2021 (FMI Act) and any other regulatory requirements in other New Zealand laws that the Commission considers relevant.¹⁸

The designation process

- 2.11 Before making a recommendation for designation, the Commission must:
- 2.11.1 Consult the Reserve Bank of New Zealand (RBNZ) if the network comprises any part of a system that is a designated FMI within the meaning of the FMI Act.¹⁹
 - 2.11.2 Consult affected operators of the network about the proposed designation. This consultation should include the reasons for making this decision.
 - 2.11.3 Make the recommendation publicly available as soon as practicable after the recommendation has been made, including a statement of reasons for that recommendation.²⁰

¹⁶ Retail Payment System Act, s 12(2)(a).

¹⁷ Retail Payment System Act, s 12(2)(b).

¹⁸ Retail Payment System Act, s 12(2)(c).

¹⁹ Retail Payment System Act, s 13(1)(a).

²⁰ Retail Payment System Act, s 13(2).

The content of a designation order

- 2.12 A designation order must specify both a network and at least one person that is an operator of the network.²¹ In addition, a designation order may specify one or more of:²²
- 2.12.1 the payment products in the designated network;
 - 2.12.2 documents that set out some or all the network rules; or
 - 2.12.3 classes of participants.

Consequences of designation

- 2.13 A designation order, on its own, imposes no legal obligation on the network operator/s or the participants. However, designation of a network does allow the Commission to then exercise its regulatory powers under the Act by:
- 2.13.1 Issuing network standards for the designated network that:²³
 - 2.13.1.1 impose requirements on participants in the network (network operators and/or other participants or classes of participants);
 - 2.13.1.2 set out requirements applying to the network with which the participants must ensure compliance;
 - 2.13.2 Issuing a direction notice to one or more participants of a designated network to take the action specified in the direction notice. A direction may require the recipients to do one or more on the following:²⁴
 - 2.13.2.1 set network rules;
 - 2.13.2.2 amend network rules;
 - 2.13.2.3 notify the Commission of any amendments made to network rules;
 - 2.13.2.4 apply for, and obtain, the Commission's approval before making amendments to network rules that are of a type identified in the direction as substantive amendments; and

²¹ Retail Payment System Act, s 14(1).

²² Retail Payment System Act, s 14(2).

²³ Retail Payment System Act, s 17.

²⁴ Retail Payment System Act, s 24.

2.13.2.5 comply with one or more network rules.

- 2.14 We will only use those regulatory powers where it is appropriate to do so. Before exercising those regulatory powers, we must first consult affected persons, or persons that the Commission considers to be representatives of affected persons, about the proposed regulation and reasons for it. We must also consider whether the proposed regulation is consistent with the purposes of the Act and the purpose and principles of exercising the Commission's functions and powers under the Act.

Chapter 3 Our reasons for proposing to recommend designation

Overview

- 3.1 Based on the information we currently have and our consideration of the mandatory factors in s 12 of the Act and the relevant purposes and principles of the Act, we currently consider that there are good reasons to recommend designation. Below are the factors we have considered in reaching that view:
- 3.1.1 The benefits of designation now.
 - 3.1.2 The nature and benefits of a thriving API enabled payment ecosystem.
 - 3.1.3 New payment methods through API enabled payment ecosystems are becoming more prevalent overseas.
 - 3.1.4 New Zealand has significant unmet demand for innovative new payment methods enabled by a thriving API enabled payment ecosystem.
 - 3.1.5 The minimum requirements for a functional API enabled payment ecosystem.
 - 3.1.6 Progress to date on implementing a thriving API enabled payment ecosystem.
 - 3.1.7 Our concerns regarding the timeliness, access arrangements, loss of investor confidence, transparency and reasonableness of fees of the API enabled ecosystem that uses any undesignated interbank payment network.
 - 3.1.8 The likely effect of the pending Payments NZ Authorisation and the anticipated CDR regime.²⁵
 - 3.1.9 The intersection between the Act and the FMI Act.²⁶
 - 3.1.10 Feedback from participants on how a thriving API enabled payment ecosystem can be achieved, as set out in this chapter and Attachment A.

²⁵ We have also considered the interaction between open banking and the CDR in Chapter 4.

²⁶ As set out in Chapter 4.

Benefits of designation on balance

- 3.2 Designation (without immediate regulation) is a measured and appropriate response to better promote the timely delivery of a thriving open API ecosystem, particularly as designation would not require further direct intervention if industry delivers in a timely way.²⁷
- 3.3 Designation changes the incentives on industry by enhancing the credible threat of regulation where industry does not deliver a thriving open API ecosystem in a timely way. This potential regulation could require participants to adhere to industry-led solutions and expose participants to a penalties regime. With designation, if industry does not deliver a thriving API ecosystem in a timely way, the time required for us to take regulatory action would be shortened. We would be able to intervene immediately after consulting on that intervention. Hence, with the change in incentives, a benefit of designation is that it can be a cost-effective way to bring forward significant unrealised benefit to consumers and businesses.
- 3.4 We recognise there may be additional costs if the use of regulatory powers is required. Any compliance costs or risk of unintended consequences of regulation would be considered as part of any future decision making process if we considered the use of regulatory powers may be necessary.
- 3.5 Consistent with good regulatory practice, we seek to use our regulatory powers no more than we consider desirable or necessary to meet the statutory purpose.
- 3.6 If we were to regulate we would expect to use, as a starting point, the industry designed solutions. A first form of regulation could be to require a participant to adhere to such a solution. Leveraging industry's expertise to achieve the desired outcome would be a cost-effective regulatory approach.
- 3.7 This work supports the purpose of the Act, as a thriving API enabled ecosystem would bring new payment products and services that better meet the needs of merchants and consumers. These new products and services may be more convenient, cheaper, faster and/or reduce risks which would promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand.²⁸

²⁷ No obligations arise as part of a designation being put in place, but it does allow us to 'step in' and issue network standards or issue directions if the need arises.

²⁸ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), paragraph 13. Available at https://comcom.govt.nz/__data/assets/pdf_file/0017/344132/Retail-Payment-System-Update-on-our-Payments-Between-Bank-Accounts-work-22-February-2024.pdf

What is the API enabled ecosystem and what are its benefits?

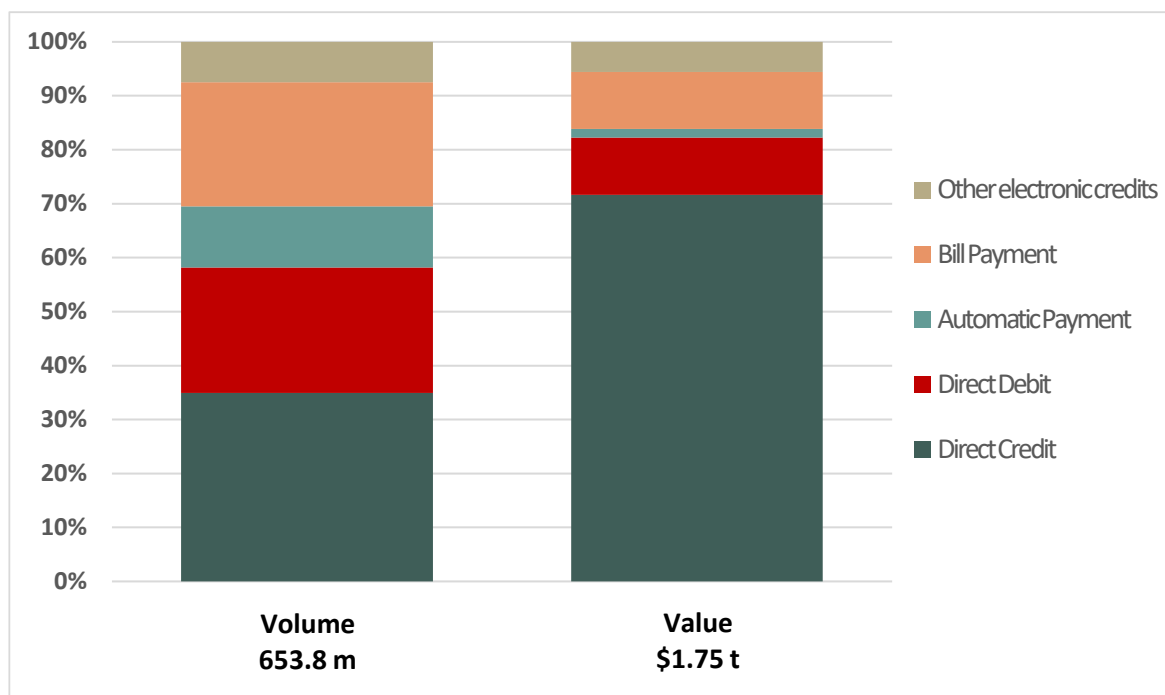
What is the API enabled ecosystem?

- 3.8 Open banking provides third party financial service providers, with the consumer's consent, access to consumer banking, transaction and other financial data from banks and other financial institutions through the use of APIs. This enables these third parties to develop products and services to meet consumers' needs.
- 3.9 Open banking can provide consumers with new, innovative and convenient ways to make use of their banking accounts through authorised third party products and services. These consumer authorised services can use data to assist with making better decisions (eg budgeting tools), they can perform actions on behalf of a consumer (eg initiating a payment), or both (eg checking for available funds before making payments).
- 3.10 We are interested in the payments aspects of open banking. This is where a payment occurs as a result of a third party payment provider having secure and efficient access to the consumer's bank so that they can initiate payments on behalf of consumers over the interbank payment network. In this context we refer to the payments related aspects of open banking as the API enabled payments ecosystem, and as the payment methods this ecosystem enables. We note that a consumer is a person (including any individual or business) that acquires good or services from a merchant.

An API enabled ecosystem uses the interbank payment network

- 3.11 The API enabled payments ecosystem would initiate payments through the interbank payment network. This is the largest retail payment network in the country and involves all bank transfers, direct debits, and automatic payments amongst other payment instruments. The API enabled payments ecosystem being developed currently uses the direct credit payment instrument.
- 3.12 Figure 3.1 below illustrates the current split between payment instruments supported by this network, by volume and value of transactions. These payment instruments support bank transfers for a wide range of common payment types.

Figure 3.1 Payment instrument share of the interbank payment network (2023) ²⁹



3.13 The scale of the interbank payment network is significant. For example, the value of payments between different bank accounts in 2023 was \$1.75 trillion.³⁰ We discuss this size, and additional aspects of the nature of the network at paragraphs 3.44 to 3.49.

3.14 We also discuss this network further in Chapter 4.

What are the benefits of a thriving API enabled ecosystem?

3.15 There are large potential benefits from a thriving API enabled ecosystem in New Zealand opening up competition in payments. This requires third parties to have efficient access to banks to initiate payments through the interbank payment network. The arrangement for access is often referred to as partnering between the third party and a bank.

²⁹ 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data is 12-month rolling totals at December 2023. Note that data refers to interbank payments only and excludes intrabank payments.

³⁰ 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that NZ\$1.75 trillion refers to interbank payments only and excludes intrabank payments.

- 3.16 A thriving API enabled payments ecosystem would promote competition and efficiency for the long-term benefit of merchants and consumers. It would do so by improving outcomes such as increased choice through more payment options, increased innovation through increased functionality, improved consumer protections, and increased uptake of innovative methods for consumers and businesses to make and receive payments to and from their bank accounts using third party services.³¹ Whilst this paper refers to banks as API providers, overtime there will be demand for non-bank deposit takers to also become APIs providers.
- 3.17 These payment methods, and related functionalities, bring direct benefit to consumers and businesses through improved and innovative product options. These options can be more convenient, reduce the direct costs of making a payment and reduce the indirect costs of payments such as reconciliation amongst other things.³²
- 3.18 Some of these benefits will be felt by consumers through the ease of making payments with greater control, for example easily being able to stop recurring payments such as subscriptions. Other options for consumers and businesses making payments would be pre-populated bank transfer information reducing the hassle of ensuring all the payment details are correct (16-digit bank account number and reference fields).
- 3.19 Other payment methods will benefit merchants through improved information attached to payments they receive, reducing the cost of reconciliation, or cheaper ways to receive payments.

³¹ For these purposes we consider banks may also want to be third parties and offer these products and services themselves to their customers or prospective customers. For example, some of the five largest banks have indicated they want to obtain view access themselves.

³² For related discussion see: McKinsey Global Institute. "Financial data unbound: The value of open data for individuals and institutions" (June 2021). Page iv. Available at <https://www.mckinsey.com/~media/mckinsey/industries/financial%20services/our%20insights/financial%20data%20unbound%20the%20value%20of%20open%20data%20for%20individuals%20and%20institutions/financial-data-unbound-discussion-paper-june-2021.pdf?shouldIndex=false>

- 3.20 In this respect, API enabled interbank payments would make the payments system more efficient, with direct benefit to consumers and merchants.³³ Studies comparing retail payment system efficiency across countries indicate that relatively small reductions in costs can be large across the economy as a whole.^{34 35}

New payment methods are becoming more prevalent overseas

- 3.21 Although not completely comparable, examples of more innovative interbank payment networks that provide for these types of payments exist in other countries. The growth in these overseas examples provide an indication of the potential benefit to merchants and consumers of alternative interbank payment methods. Examples of these underlying payment systems include:³⁶

3.21.1 iDEAL in the Netherlands;

3.21.2 Blik in Poland;

3.21.3 Toss in South Korea; and

3.21.4 Swish in Sweden.

³³ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024). Paragraphs 2.24 and 2.25.

³⁴ A 2012 European Central Bank (ECB) study of the social and private costs of different payment instruments shows that the costs to society of providing retail payment services are substantial. They amounted to €45 billion, i.e. 0.96% of GDP, for the sample of 13 participating EU countries. For the wider EU27 group, these costs were estimated at close to 1% of GDP or €130 billion. Examples of participating EU countries with a low social cost of payments were Finland (0.34% of GDP), Netherlands (0.42% of GDP), and Sweden (0.52% or 0.68%). See European Central Bank “The Social and Private Costs of Retail Payment Instruments – A European Perspective” (September 2012) <https://www.ecb.europa.eu/pub/pdf/scpops/ecbocp137.pdf>, including pages 6, 35 to 36. See also European Central Bank for an overview of studies on the social and private costs of retail payments conducted since 2013 in nine EU countries “Costs of retail payments – an overview of recent national studies in Europe” (December 2022) <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op294~8ac480631a.en.pdf>

³⁵ Further examples of these studies are available at Bank of Canada which found “the resource costs of payments in Canada are non-negligible (0.78 per cent of GDP)”, see “The Costs of Point-of-Sale Payments in Canada” (March 2017) <https://www.bankofcanada.ca/wp-content/uploads/2017/03/sdp2017-4.pdf>; and on Sweden and Norway at Sveriges Riksbank “Cost of Payments in Sweden” (March 2023) <https://www.riksbank.se/globalassets/media/rapporter/riksbanksstudie/engelska/2023/riksbanksstudiecost-of-payments-in-sweden.pdf>

³⁶ Joe Garner et al. “Future of Payments Review” (UK) (November 2023). Pages 59 and 60. Available at https://assets.publishing.service.gov.uk/media/6557a1eb046ed400148b9b50/Future_of_Payments_Review_report.pdf

- 3.22 Other examples such as UPI in India and Pix in Brazil have been more successful by many metrics.³⁷ These both required significant regulatory intervention to develop.

There is demand for innovative payment options enabled by a thriving API enabled payment ecosystem

- 3.23 We consider there is significant unmet demand for innovative payment options enabled by a flourishing API ecosystem, and therefore large unrealised benefits for merchants and consumers.
- 3.24 To date, there is only a single API based third party payment product that has established links to four of the five largest banks. Worldline's Online Eftpos established secure API connections with the four largest banks and the Co-operative Bank.
- 3.25 Despite Worldline partnering with the four largest banks, we have yet to see market wide adoption of Online Eftpos. A key reason might be that Worldline pays for the use of the API while similar products with sub-optimal connections do not have that cost and are able to charge merchants lower fees. Another factor may be the extended delay in gaining access to all five of the largest banks which meant the merchant proposition is diminished. Without Kiwibank (and other smaller banks), the product is still not able to be used by a significant share of consumers.
- 3.26 There are a range of innovative payment options but they currently rely on sub-optimal methods to access the interbank payment network (for example, screen scraping and reverse engineered mobile application APIs).³⁸ These sub-optimal methods require the consumer to provide the third party with their username and password for their online banking.
- 3.27 Despite this, some of them have widespread uptake in NZ, demonstrating unmet demand for API enabled payment products and services. Some examples include:
- 3.27.1 POLi – POLi provides consumers with a correctly prefilled bank transfer to the merchant for their approval. POLi has reported an average monthly customer usage of 500,000 consumers.³⁹

³⁷ Feliba, D. "Brazil's PIX and India's UPI: Digital Payments Success Stories in Emerging Markets" (29 Sep 2023). Available at <https://www.fintechx.com/brazils-pix-and-indias-upi-digital-payments-success-stories-in-emerging-markets>

³⁸ For example, use cases that require functionality for enduring payment consent for variable payees, such as payroll solutions.

³⁹ Merco Ltd. "Merco Ltd. Submission on Retail Payments Between Bank Accounts" (25 September 2023), page 6, question 9. Available at https://comcom.govt.nz/__data/assets/pdf_file/0031/332788/Merco-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

- 3.27.2 Akahu – Akahu is an intermediary which provides other third parties with access to a range of banks (the third party still requires the consumer's consent). Some of the third parties that have connected to Akahu include:
- 3.27.2.1 PaySauce, a third party provider of payroll services for employers;⁴⁰
 - 3.27.2.2 Dolla, a payments app for customers and businesses;⁴¹
 - 3.27.2.3 Tiger Brokers, an online broker which offers consumers a mobile trading app to make investments;⁴²
 - 3.27.2.4 Employment Hero, a third party provider of a HR, payroll, and benefits platform;⁴³
 - 3.27.2.5 myRent, a third party provider which offers a platform for NZ self-managing landlords to advertise and manage their rental properties;⁴⁴ and
 - 3.27.2.6 PayHero, a third party provider of payroll services for employers.⁴⁵
- 3.28 While some of these products and services have widespread uptake in some segments of the market, there are likely many more consumers and merchants that would be willing to use them if they did not need to share their bank login details.
- 3.29 We understand that there is demand for innovative interbank payment solutions in respect of online payments for recurring subscriptions together with ongoing and regular bill payments. These payments can be scheduled to better manage consumer budgets and for merchants to avoid the costs associated with reconciliation and implications of missed payments.⁴⁶

⁴⁰ See “Akahu with PaySauce – Payroll using New Zealand’s open finance platform” at <https://www.paysauce.com/akahu/>

⁴¹ See “Open banking in action” at Dolla <https://www.dolla.nz/>

⁴² Akahu “Case study: Tiger Brokers” available at <https://www.akahu.nz/case-study/tiger-brokers>

⁴³ Employment Hero “Intergrate with Akahu” available at <https://employmenthero.com/nz/integrations/akahu/>

⁴⁴ See “myRent + Akahu” at <https://www.myrent.co.nz/akahu>

⁴⁵ See “Connect to your bank and pay employees with ease” at <https://www.payhero.co.nz/akahu>

⁴⁶ See “Keep Your Bills Under Control” at <https://www.blinkpay.co.nz/for-you#receive-bills>

- 3.30 We consider the current functionality of the interbank network is not meeting these increasing needs of consumers and businesses. We note that Figure 3.3 shows that the total transaction value of direct debit payments, which can be used for recurring payments such as rates or insurance or for variable payments such as power bills for example, has not increased in line with economic activity in recent years.⁴⁷ This suggests the current direct debit payment instrument in the interbank network may not sufficiently meet the evolving needs of businesses and consumers.
- 3.31 Many subscription or reoccurring payment requirements are being met with card payments as these allow for smoother consumer onboarding. However, these options also have drawbacks in that it can be difficult for consumers to cancel some of these payments. Much like direct debits, it often is not easy to identify upcoming payments. In addition, there is a greater direct cost to the merchant. A thriving API payment ecosystem would allow for greater control in turning on and off recurring payments and for increased visibility of upcoming payments.
- 3.32 Over time, we also expect that in person contactless interbank payment solutions will become available to compete with established payment methods. We are aware of one such offering in development by Worldline, a virtual bank card stored in digital wallets that will allow tap-and-go payments, is unlikely to attract a surcharge, and offers lower fees for merchants.⁴⁸
- 3.33 We observe other market features demonstrating the unmet demand for innovative payment options enabled by a flourishing API ecosystem. For example, some banks have partnered with some third parties to use their APIs. Customers are using these services despite them being limited to only some banks. For example:

⁴⁷ Fixed and variable payment examples are from Payments NZ at <https://www.paymentsnz.co.nz/resources/payment-methods/direct-debit/>

⁴⁸ See “New contactless payments taking off” at <https://www.paymark.co.nz/blog/new-contactless-payments-taking-off/>

- 3.33.1 Blink PayNow use by Sharesies.⁴⁹ This is an innovative API enabled interbank payment option provided by the third party Blinkpay that enables Sharesies users to make bank transfer payments that are "faster" to their Sharesies investment wallets. We note that Blinkpay reported over \$1M in transactions going through Blink PayNow in the first month post launch.⁵⁰ However, the provision of this payment option is limited to those Sharesies users who are customers of either BNZ or Westpac, the two banks Blinkpay has partnered with that have APIs it is able to use.
- 3.34 Competition delivers market outcomes that meet end-user demands across a range of price and non-price product elements. These examples, demonstrating the unmet demand of consumers and merchants for innovative interbank payment options, indicate that market outcomes are not competitive in New Zealand. Ultimately, these examples highlight a potential widespread economic inefficiency in the retail payments system.

General acceptance of the potential benefit

- 3.35 Despite the mixed sentiment in some submissions on other aspects of our request for views paper, we consider it is now generally accepted that payment methods supported by a thriving API enabled ecosystem have significant benefits for consumers and merchants.⁵¹
- 3.36 We note that industry has recently described the significant public benefits that would be expected by increasing competition through open access to the interbank payment network. For example, Payments NZ's recent authorisation application, on behalf of API Providers (banks) and Third Parties states:⁵²

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 (...)

[A]ny 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.

⁴⁹ See "Sharesies case study" at <https://media.blinkpay.co.nz/hubfs/case-studies/Sharesies-case-study.pdf?hsLang=en>

⁵⁰ "Sharesies case study", page 11 at <https://media.blinkpay.co.nz/hubfs/case-studies/Sharesies-case-study.pdf?hsLang=en>

⁵¹ We note that Kiwibank has questioned these benefits. For discussion on this, see Attachment A, paragraph A4.

⁵² Payments NZ Limited Authorisation application (16 January 2024), paragraphs 4 and 14, https://comcom.govt.nz/__data/assets/pdf_file/0026/340586/Payments-NZ-Limited-Authorisation-application-16-January-2024.pdf

- 3.37 In the authorisation application, Payments NZ describes the mechanisms through which it considers these significant public benefits would be derived. These include mitigating access difficulties, and ensuring all Standards Users have equivalent access to the ecosystem.⁵³
- 3.38 However, the full benefits of an API enabled ecosystem are not yet present in New Zealand. This is evidenced by the considerable unmet demand for API enabled innovative interbank payment options and the widespread use of suboptimal access methods, among other things.

What are the minimum requirements for a thriving API enabled ecosystem?

- 3.39 Through our recent engagement and submissions on our request for views paper, we have enhanced our understanding of what we believe are the minimum requirements to allow a thriving API enabled payment ecosystem.⁵⁴
- 3.40 Our understanding of the minimum requirements for a thriving API enabled payments ecosystem are detailed in our recent open letter.⁵⁵ They include:
- 3.40.1 The design and deployment of the APIs through which third parties connect to banks to initiate payments on behalf of the consumer.
 - 3.40.2 The ability for third parties to partner with banks to use the APIs.
 - 3.40.3 There being third party providers that are incentivised to develop products and services for consumers and merchants using APIs. We consider 90% coverage of consumers would support the development of commercially viable API enabled payment products.
 - 3.40.4 Consumers and merchants demand these API enabled products and services and have the confidence and trust to switch to them from existing payment products.

⁵³ Payments NZ Limited Authorisation application (16 January 2024), paragraph 15, https://comcom.govt.nz/__data/assets/pdf_file/0026/340586/Payments-NZ-Limited-Authorisation-application-16-January-2024.pdf

⁵⁴ In our open letter we provided our view of the minimum requirements for a thriving API enabled ecosystem (Annex A) and our expectations for industry in the delivery of this API enabled eco-system (Annex B). Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024).

⁵⁵ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024), Annex A.

- 3.41 Our view on these requirements comes from insights gained from industry and stakeholder engagements. Some of these insights are discussed in the body of this paper. Further consideration of industry and stakeholder feedback is detailed in Attachment A.
- 3.42 These minimum requirements have not all been met which is why the API enabled payment ecosystem is not thriving. For example, there has been a large amount of work on designing APIs which are considered world leading in some respects and are a good starting place for further functionality. However, there has been very limited partnering by most banks with third parties.

There are good reasons for proposing to make a designation

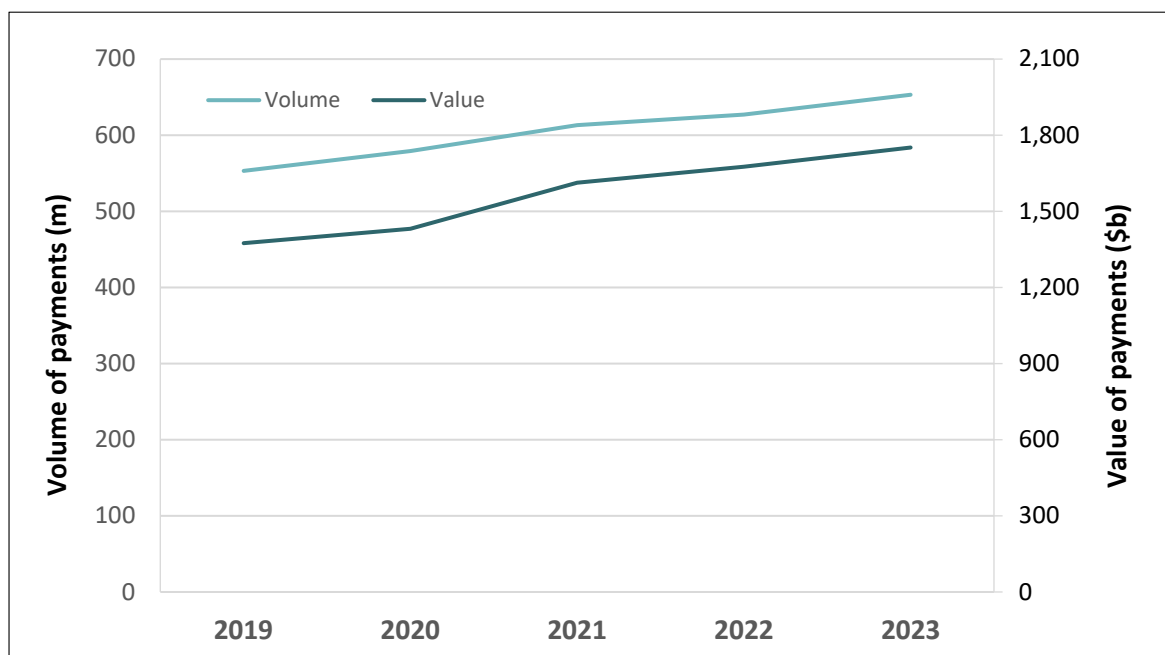
A thriving API enabled ecosystem has significant benefits, but the full benefits of an API enabled ecosystem are not present in New Zealand yet.

- 3.43 We do not yet have a thriving API enabled payment ecosystem due to a number of minimum requirements being unmet and, therefore, the full benefits are yet to be realised.
- 3.44 In considering the extent of these unrealised benefits of an API enabled ecosystem in New Zealand, we are taking into account the nature of the network, including the number, value, and nature of the transactions that the network currently processes or is likely to process in the future (we note our obligations in this regard, see paragraph 2.10.2).
- 3.45 The interbank payment network is widely used for payments in New Zealand and the scale is significant. The value of payments between different bank accounts in 2023 was \$1.75 trillion, and the number of transactions was 653.8 million.⁵⁶ We note this excludes payments between two customers at the same bank.⁵⁷ Figure 3.2 below shows the considerable size of the network, in terms of value and volume of all interbank payments, and that this has been increasing through time.

⁵⁶ 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data refers to interbank payments only and excludes intrabank payments.

⁵⁷ 2023 BECS information from Payments NZ "BECS Performance Dashboard" (December 2023).

Figure 3.2 Volume and value of interbank payments (2019 - 2023)⁵⁸



- 3.46 We expect the interbank payment network to continue to be widely used for payments in the future. This is due to the reliance on bank transfers for a wide range of common payments, such as wages, invoices, dividends, ongoing mortgage and rent payments, rates, insurance, telephone, and power bills.⁵⁹

⁵⁸ BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data refers to interbank payments only and excludes intrabank payments.

⁵⁹ We previously discussed this in our request for views paper (31 July 2013), available at https://comcom.govt.nz/__data/assets/pdf_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf

Figure 3.3 Indexed total value (\$) of interbank payment instruments (2019 - 2023)⁶⁰

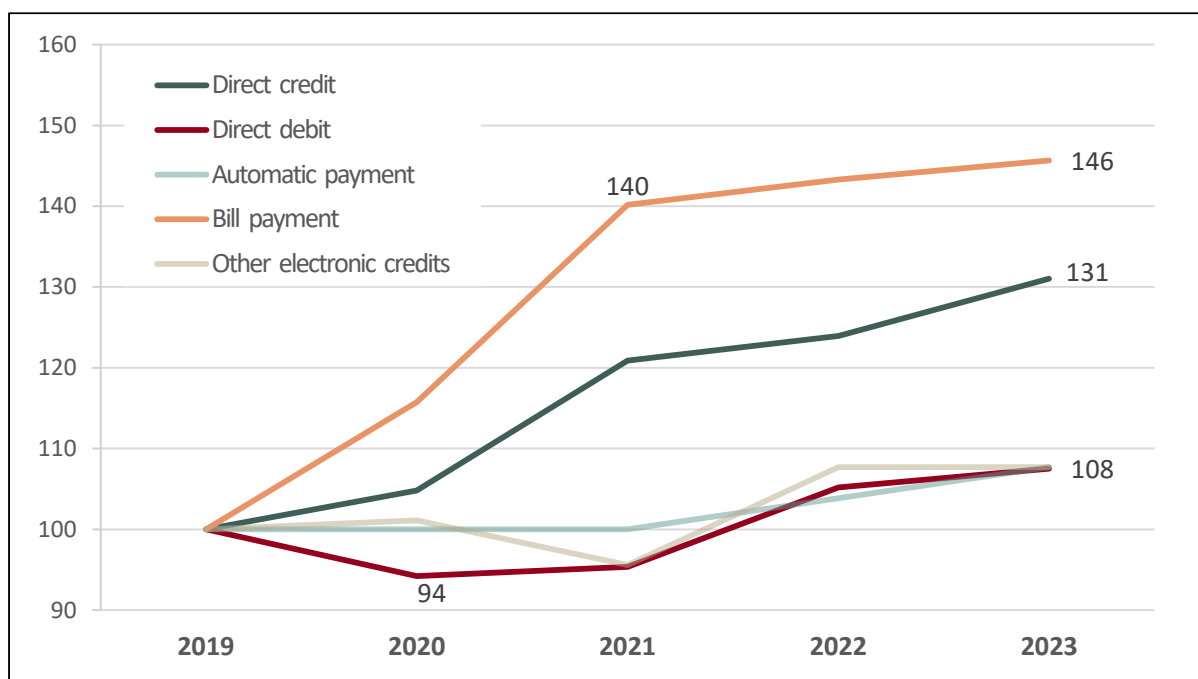
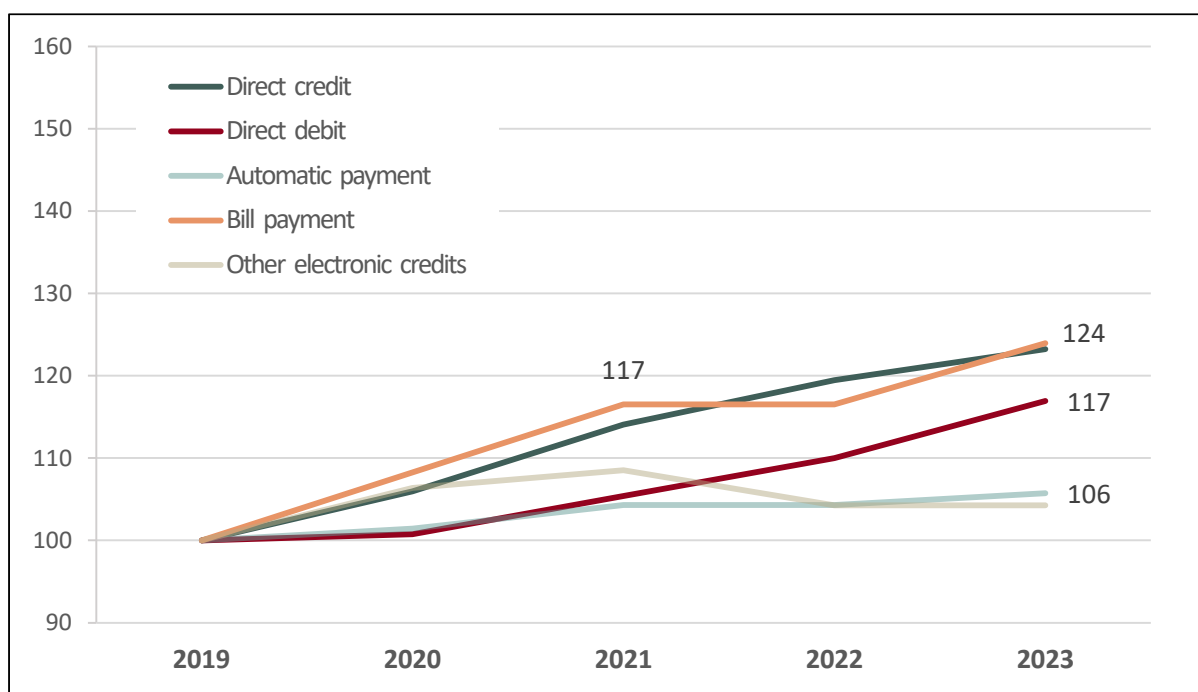


Figure 3.4 Indexed total volume of transactions of interbank payment instruments (2019 - 2023)⁶¹



- 3.47 Figures 3.3 and 3.4 show the growth of the multiple payment instruments that serve different payment needs. Many of these methods are business to business payments used at considerable scale. For example, the direct credit instrument supports payments such as wages, salaries, and invoices, and is often used by businesses to make batches of payments in one transaction.⁶²
- 3.48 Figure 3.3 shows that under the current settings, only direct credit and bill payment instruments have total transaction values that have increased in line with economic activity over this time period. Of note is that bill payments, while overall increasing, have plateaued in more recent years. Figure 3.4 also shows that only direct credit and bill payment instruments have total transaction volumes that have increased with in keeping with economic activity.
- 3.49 Unlocking innovative new payment methods to address unmet consumer and business demand on a network of this scale would deliver benefits of a significant order.

We recognise industry efforts, but are concerned that industry is unlikely to deliver in a timely manner

- 3.50 We recognise industry efforts but are concerned that industry will not deliver a thriving API enabled payment eco-system alone. Industry has made a start but there are features of the interbank payment network and conduct of the participants which we consider mean that the minimum requirements are unlikely to be met in a timely manner without a credible threat of regulation.

Industry led outcome carries the risk of further delivery delays due to weak incentives and exemptions

- 3.51 As discussed in our open letter, whilst we are currently in a period of momentum, we have observed this in the past, only for momentum to stall. For example, previous governments have set expectations for bank progress, however despite industry talking about API development and implementation for several years, progress has been slow.⁶³

⁶⁰ BECS information from Payments NZ "BECS Performance Dashboard" (December 2023). Note that data refers to interbank payments only and excludes intrabank payments.

⁶¹ BECS information from Payments NZ "BECS Performance Dashboard" (December 2023).

⁶² See Payments NZ at <https://www.paymentsnz.co.nz/resources/payment-methods/direct-credits/>

⁶³ The Minister of Commerce and Consumer Affairs sent this open letter to API providers in 2019 expressing his concerns on the current pace and scope of progress of API development. See Hon Kris Faafoi, Minister of Commerce and Consumer Affairs "Open letter to API Providers regarding industry progress on API enabled data sharing and open banking" (December 2019) available at <https://www.mbie.govt.nz/assets/open-letter-to-api-providers-regarding-industry-progress-on-api-enabled-data-sharing-and-open-banking.pdf>

3.52 In our 22 February open letter, we noted that this view has been reinforced by the lack of public reporting by the banks on their progress against the timeframes, specifications and guidelines of the Minimum Open Banking Implementation Plan.⁶⁴ This reduces confidence the banks will meet the Minimum Open Banking Implementation Plan.

Figure 3.5 API Centre minimum open banking implementation plan⁶⁵

Payment Initiation implementation plan			
API Provider	Version 2.1	Version 2.2	Version 2.3
ANZ	30 May, 2024	-	-
ASB	30 May, 2024	-	-
BNZ	READY	-	-
Kiwibank	30 May, 2026	-	-
Westpac	30 May, 2024	-	-

Account Information implementation plan			
API Providers	Version 2.1.1	Version 2.2	Version 2.3
ANZ	30 Nov, 2024	-	-
ASB	30 Nov, 2024	-	-
BNZ	30 Nov, 2024	-	-
Kiwibank	30 Nov, 2026	-	-
Westpac	30 Nov, 2024	-	-

3.53 These issues call into question the incentives these five largest banks face for both delivery and transparency.

⁶⁴ Payments NZ API Centre “Minimum Open Banking Implementation Plan” (30 May 2023). Available at <https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-banking-implementation-plan/>

⁶⁵ Payments NZ API Centre “Minimum Open Banking Implementation Plan” (30 May 2023). Available at <https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-banking-implementation-plan/>

- 3.54 We consider that incentives on banks for delivery may be weak. In our view, several assumptions may be at play for some banks including views that:
- 3.54.1 greater competition from new innovative API enabled payment options may erode existing revenue streams from card schemes;
 - 3.54.2 there is a first mover disadvantage in the investment of API development given the uncertainty in other banks' private cost-benefit assessments of investing and delivery timeframes;
 - 3.54.3 there is limited expected profit in investing in the API enabled eco-system, irrespective of other banks' commitment, with underpinning assumptions including:
 - 3.54.3.1 demand in New Zealand for innovative new API enabled payment options is limited or highly uncertain;
 - 3.54.3.2 merchants are indifferent between secure and insecure payment methods for their customers, and that demand is already significantly satisfied by innovative bank transfer options that use suboptimal access methods to the interbank payment network (eg POLi Pay and third party payment options enabled by the intermediary Akahu);
 - 3.54.3.3 the expected costs associated with liability for fraudulent transactions in API enabled payment options will exceed the revenue potential;
 - 3.54.3.4 terms in respect of access arrangements may be regulated at a level that does not allow a return on investment; and
 - 3.54.4 third party providers are banks' potential rivals in the provision of innovative API enabled payment options and/or services to consumers and businesses.
- 3.55 We consider it is important to note that the minimum implementation plan is currently only for one version of the standards. We expect there to be future implementation plans for the functional and non-functional aspects of the APIs.⁶⁶ Therefore there will be a future delivery timeline which these arguments may also apply to.

⁶⁶ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A.

- 3.56 We note that even a single large bank de-prioritising or refusing to meet the delivery timelines, and/or refusing to develop all the API functionality that they agreed in the industry’s Minimum Open Banking Implementation plan, may undermine the viability of the whole API enabled eco-system.^{67 68}
- 3.56.1 For third party payment providers to develop a viable commercial proposition, they will need open API access at all banks, enabling wider appeal to consumers. If some banks decide not to build open APIs, the success of the payment providers are at risk.⁶⁹
- 3.56.2 As a result of our analysis of the submissions received on the request for views paper and insights gained from industry activity and stakeholder engagement, we now believe that API access at banks ANZ, ASB, BNZ, Kiwibank and Westpac would allow third party payment providers to potentially gain access to a sufficient number of consumers to support commercially viable API enabled payment products.⁷⁰ These banks collectively represent over 90% of all consumers' bank accounts in New Zealand.⁷¹
- 3.56.3 The viability of the third party payment providers, their innovative products, and the API enabled payments eco-system as a whole, is likely to be undermined where any one of these five largest banks decides not to build open APIs and does not meet the minimum requirements to allow a thriving API enabled payment eco-system to develop.
- 3.56.4 While all these banks have signed up to the Minimum Implementation Plan, Kiwibank has not committed to delivering their first version of the APIs until 2026. This represents a risk for third party payment providers and missed benefits for their customers.

⁶⁷ Payments NZ API Centre “Minimum Open Banking Implementation Plan” (May 2023). Available at <https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-banking-implementation-plan/>

⁶⁸ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024), paragraph 13.

⁶⁹ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023). Paragraph 4.16. Available at https://comcom.govt.nz/__data/assets/pdf_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf

⁷⁰ Payments NZ API Centre “Minimum Open Banking Implementation Plan” (30 May 2023). Available at <https://www.apicentre.paymentsnz.co.nz/standards/implementation/minimum-open-banking-implementation-plan/>

⁷¹ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024), Annex C.

- 3.57 We note also that the API Centre governance model allows API providers or banks, the ability to request an exemption from adherence to the open banking implementation plan and minimum delivery requirements.⁷² We see this as an additional factor potentially hindering timely delivery of an API enabled payments eco-system.

Industry-led outcome carries the risk of potential barriers to access

- 3.58 We are concerned that some large banks may be refusing to provide access and/or are offering commercially prohibitive terms, and that this may be a further market distortion that is reducing competition. If one large bank fails to offer access, we are concerned this will inhibit the ability of third parties to offer API enabled payment products and services and will ultimately inhibit growth and innovation in the whole interbank network. For examples of third party concerns see paragraph A17.
- 3.59 To the best of our knowledge, since ANZ provided access to Worldline in 2022, it has not partnered with any other providers.⁷³ As ANZ is the largest bank, its progress on access arrangements has the greatest impact on the development of the API enabled payments ecosystem. As a point of comparison, we note that BNZ had already built v2.1 of the payment initiation standard when the minimum implementation plan was set in May 2023 and had already begun partnering with fintechs for its use. This is markedly different from other banks. There are also other banks which are yet to meet the May 2024 deadline for having an operating API to v2.1 of the standards but have begun partnering with fintechs.⁷⁴

⁷² See Payments NZ API Centre "Exemptions" at <https://www.apicentre.paymentsnz.co.nz/standards/implementation/exemptions/>

⁷³ See media release from ANZ at <https://media.anz.com/posts/2022/04/anz-commences-joint-venture-with-worldline>

⁷⁴ For discussion on ASB see <https://www.scoop.co.nz/stories/BU2207/S00171/blinkpay-signs-agreement-with-asb.htm>; for BNZ see <https://fintechnz.org.nz/2023/05/30/qippay-partners-with-bnz/>; for Westpac see <https://news.blinkpay.co.nz/blinkpay-signs-agreement-with-westpac>. See also NZ Herald at <https://www.nzherald.co.nz/business/how-worldline-plans-to-take-eftpos-into-the-future/4VOPFFMKEBGXDFHYHBHN64JSVI/>

Industry-led outcome carries the risk of losing investor confidence

- 3.60 We note that there are 24 parties (7 API providers and 17 third parties) signed to the API Centre, and that all third party provider start-ups and multinationals need investment to continue developing these innovative payment options.⁷⁵ Delays or uncertainty in the delivery of the minimum requirements for a thriving API enabled eco-system are likely to affect the confidence of investors in these innovative payment options to the potential significant detriment of business and consumers in New Zealand.
- 3.61 We consider that if there are further delays, this may increase the risk premia on investments in the NZ payment system both for fintechs and for banks. If major banks continue to treat open banking, including a thriving API enabled ecosystem, as a 'nice to have' then future investments will be harder to achieve.

Industry-led outcome carries the risk of ongoing transparency issues and limited incentives for reasonable fees

- 3.62 We take into consideration themes relating to transparency and reasonableness of fees given our obligations under the Act (see paragraph 2.5).
- 3.63 Stakeholders have raised material concerns relating to the principle that merchants and consumers should pay no more than reasonable fees and to the principle of transparency. We note examples of these concerns from submissions on our request for views paper (see paragraphs A20 to A26).
- 3.64 Several of the minimum API requirements that we consider are not met relate to issues with transparency and reasonable fees in the API eco-system.⁷⁶ We also set some additional expectations in relation to transparency of the API Centre and Banks.⁷⁷
- 3.65 For example, the application programming interface requirement includes **API non-functional aspects**, such as transparent reporting.⁷⁸
- 3.66 The partnering requirement includes:

⁷⁵ Payments NZ API Centre "Current Standards Users", available at <https://www.apicentre.paymentsnz.co.nz/join/api-standards-user/current-standards-users/>

⁷⁶ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A.

⁷⁷ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex B, table B1.

⁷⁸ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A, paragraph A2.

- 3.66.1 **Partnering Process** that requires that the process for banks and third party payment providers reaching access agreements for API use is standardised across banks and is transparent, reasonable, takes an appropriate amount of time;⁷⁹ and
- 3.66.2 **Pricing** including that the price charged by banks for API calls creates incentives for both banks and third party payment providers to enter into agreements for the use of APIs. The price for access and use of banks' APIs should enable banks to recover costs, and provide incentives for both parties to develop, iterate and use APIs.⁸⁰

Payments NZ application to the Commission for Authorisation does not fully address the above concerns

- 3.67 On 16 January 2024, the Competition Branch of the Commission received an application from Payments NZ seeking authorisation under Commerce Act 1986 to further develop its framework for open banking (the Authorisation Application). The Authorisation Application is for the joint development of:⁸¹
- 3.67.1 an accreditation scheme (including accreditation criteria) for third parties, and
- 3.67.2 default standard terms and conditions on which banks would contract with third parties who meet the accreditation criteria.
- 3.68 We note that Payments NZ is not seeking authorisation for the specific accreditation criteria or the standard terms and conditions themselves, only for the negotiation process and giving effect to its outcome.⁸²

⁷⁹ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A, paragraph A12.

⁸⁰ Commerce Commission "Retail Payment System – Update on our Payments Between Bank Accounts work" (22 February 2024), Annex A, paragraph A13.

⁸¹ Commerce Commission "Payments NZ Limited - Statement of Preliminary Issues" (12 February 2024), paragraph 10, https://comcom.govt.nz/__data/assets/pdf_file/0025/343285/Payments-NZ-Limited-Statement-of-Preliminary-Issues-12-February-2024.pdf; Payments NZ Limited "Authorisation Application" (16 January 2024), paragraph 8. https://comcom.govt.nz/__data/assets/pdf_file/0026/340586/Payments-NZ-Limited-Authorisation-application-16-January-2024.pdf

⁸² Commerce Commission "Statement of Preliminary Issues" (12 February 2024), paragraph 12.

- 3.69 We acknowledge Payments NZ's recent steps to submit an authorisation application to the Commission to enter into a collaborative agreement.⁸³ We also recognise that the application states that Payments NZ is seeking authorisation for the proposed arrangement to:⁸⁴

[A]ddress the inefficiencies of the bilateral partnering model and facilitate the development of open banking in Aotearoa New Zealand (...)

- 3.70 However, while we consider lawful collaboration is a key component of a thriving API enabled ecosystem, we do not consider that this alone will result in all the minimum requirements being met.

Industry is unlikely to deliver alone in a timely manner

- 3.71 Industry has not delivered what we consider to be the minimum requirements to allow a thriving API enabled payment eco-system.

- 3.72 We summarise below some of the features of the network and/or the conduct of participants that we consider are preventing these minimum requirements from being met.⁸⁵

3.72.1 A feature of the development of new payment methods on the interbank payment network is that it requires the five largest banks to collectively deploy APIs and partner with third parties (see paragraph 3.56), and as we discuss at paragraphs 3.53 to 3.57, we believe incentives are mixed.

3.72.2 We are also concerned by how some banks are approaching access arrangements with third parties (see paragraphs 3.58 to 3.59).

3.72.3 Further, the evidence of unmet demand (see paragraphs 3.23 to 3.34) and impact on investors (see paragraphs 3.60 to 3.61) suggests these features and conduct have material implications on the competition and efficiency of the interbank payment network and more widely the retail payment system.

- 3.73 In our view, these features and/or conduct reduce, or are likely to reduce, competition or efficiency. These features or conduct are likely to continue to reduce competition and efficiency without designation of the interbank network. This would lead to missed benefits for both consumers and merchants.

⁸³ Payments NZ Limited, Authorisation Application (16 January 2024).

⁸⁴ Payments NZ Limited, Authorisation Application (16 January 2024).

⁸⁵ Retail Payment System Act, s12(2)(a).

- 3.74 We note that we have already considered the reasonableness of fees, and set out our expectations and minimum requirements for transparency in relation to partnering in our recent open letter.^{86 87}

The Customer and Product Data Bill cannot solve the problems identified as quickly as a designation under the Act

- 3.75 Successive governments have signalled their desire to see open banking developed at pace. This has led to the development of an economy wide CDR regime which will be introduced via the Customer and Product Data Bill (the Bill). Banking is expected to be the first sector to be designated. We referenced the interaction of regulatory interventions in relation to the Bill and the proposed designation in our request for views paper.⁸⁸
- 3.76 However, we note that there remains uncertainty as to when the Bill will be enacted as the Bill has not been introduced and regulations will need to be passed before a banking sector designation is made and this could take some time.
- 3.77 We note the concerns of some stakeholders on the potential for regulatory duplication. However, given the time delay inherent in respect of the CDR regime, this regulatory mechanism cannot be relied on to deliver the benefits of an API enabled payments ecosystem to consumers and businesses in a timely way. The CDR regime intends to leverage off existing industry-led work where possible. For a banking designation under the CDR regime, we expect the API standards developed through payments NZ to be used as a starting point, as well as any regulatory settings we may develop under any designation (see paragraph 4.14).

Why designate?

Net benefits of designation

- 3.78 Designation would provide a regulatory backstop that would enable the Commission to intervene in a more timely way in the event that the banks fail to deliver the requirements to support a thriving API enabled payments eco-system. Following designation, regulation may not be required if industry delivers a thriving API enabled payments ecosystem in a timely way.⁸⁹ Hence a benefit of designation is that it can be a cost-effective regulatory approach.

⁸⁶ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024), Annex A and Annex C.

⁸⁷ Retail Payment System Act, s4(2).

⁸⁸ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), paragraph 2.29.

⁸⁹ No obligations arise as part of a designation being put in place, but it does allow us to 'step in' and issue network standards or issue directions if the need arises.

- 3.79 The primary benefit of designation is the incentives it would generate for industry. If we decide to recommend designation, and a designation order is made, it will provide the credible threat of timely regulation. This ability to quickly intervene would encourage industry to keep up its momentum and deliver this outcome without the need for regulatory intervention by the Commission.⁹⁰
- 3.80 Having a designation in place would likely incentivise quicker resolution of any issues as they arise and could reduce the incentives for issues to occur in the first instance. We consider this could provide greater certainty for banks and third party payment providers and importantly their investors to continue to move forward with the development of the API enabled payments ecosystem.⁹¹ This added certainty is also a benefit of designation.
- 3.81 Open banking regimes around the world have required regulatory intervention, often ongoing to some degree, to flourish. Furthermore, as discussed earlier, the more successful API enabled payment ecosystems in the world, UPI in India and Pix in Brazil, have had significant government involvement. We are not proposing involvement of that scale but consider that the availability of more timely regulatory intervention would provide greater confidence in delivery.
- 3.82 Industry is best placed to design and develop most of the technical aspects required for the API enabled ecosystem. Under the proposed designation we would expect industry to continue their role on most aspects of the API enabled ecosystem. If the industry led solutions are sufficiently considered in the design, development and implementation of the API enabled ecosystem in terms of promoting competition and efficiency for the long-term benefit of merchants and consumers we may only need to be focussed on the timeliness of the delivery.
- 3.83 While we are not consulting on the use of our regulatory powers under a designation we note that the benefits of designation include the potential use of an expanded set of powers on a more timely basis and the incentives this provides.⁹² A first use of these powers could be to ensure there is participation by a range of banks in industry designed solutions. This could be through requiring participants to adhere to rules such as the API Centre membership rules.⁹³

⁹⁰ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024), paragraph 13.6.

⁹¹ Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024), paragraph 14.

⁹² We note that the request for views paper considered the use of regulatory powers. Commerce Commission “Retail Payment System – Update on our Payments Between Bank Accounts work” (22 February 2024).

⁹³ Retail Payment System Act, s 24(3).

- 3.84 These regulatory powers could be used to address:
- 3.84.1 delays to delivery timelines if any large bank is stalling API development by requiring compliance with industry agreed solutions;
 - 3.84.2 barriers to partnering for third party payment providers for the use of APIs if any large bank decides not to partner and/or offers commercially prohibitive terms;
 - 3.84.3 functional or non-functional aspects of the API standards that do not support competitive payment options; and
 - 3.84.4 banking sector readiness for the CDR regime when it comes into force by supporting API delivery and access arrangements.
- 3.85 We expect the monitoring costs from designating now to be equivalent to the alternatives of designating at some point in the future or not designating at all. In our open letter we set out several expectations against which we will be monitoring industry progress. Irrespective of whether we proceed with a recommendation to designate, we will be monitoring the progress of open banking due to the benefit it will bring to merchants and consumers. We therefore consider that monitoring costs are likely to be the same with a designation.
- 3.86 On a net basis, we consider the benefits of designating now exceed the costs.

Designation is a measured and appropriate response

- 3.87 In our view, designation (without immediate regulation) would be a measured response to the delivery delays and other risks identified above. We consider that, of all the possible regulatory responses (aside from doing nothing), designation without immediate regulation would impose the minimum reasonable obligation and cost on participants, while encouraging industry to deliver a thriving API enabled ecosystem in a timely way, with the regulatory backstop of further intervention if a thriving and open system is not forthcoming.
- 3.88 A recommendation to designate is also appropriate and consistent with the purpose of the Act and of our functions and powers under the Act. For the reasons set out above, a recommendation to designate is consistent with the purpose of the Act, in that designation will promote competition and efficiency in the retail payment system for the long-term benefit of merchants and consumers in New Zealand. We also consider any recommendation to designate would be consistent with the reasonable fee and transparency principles of the Act.

Why designate now?

- 3.89 We consider that designating now will bring forward the significant unrealised benefits to consumers and businesses in a cost-effective way. To not designate now, would most likely delay these benefits.
- 3.90 As we have discussed, industry has made a good start but there are delivery delays and any industry led process carries several risks (see paragraphs 3.50 to 3.74). We also consider that even where Payments NZ receives authorisation to lawfully collaborate, there would still be potential for further significant delay.
- 3.91 As we discuss at paragraphs 3.75 to 3.77, we note that there remains uncertainty as to when the Customer and Product Data Bill will become law and the extent of regulatory overlap. As the Consumer and Product Data Bill has yet to be introduced, we expect it would take some time before a banking sector designation under the CDR regime to take effect.
- 3.92 Our view remains unchanged from our request for views paper that both our proposed designation and the CDR regime is expected to use the API standards developed through Payments NZ as a starting point and are, therefore, likely to be complementary.

Chapter 4 Our proposed designation

Content of our proposed designation

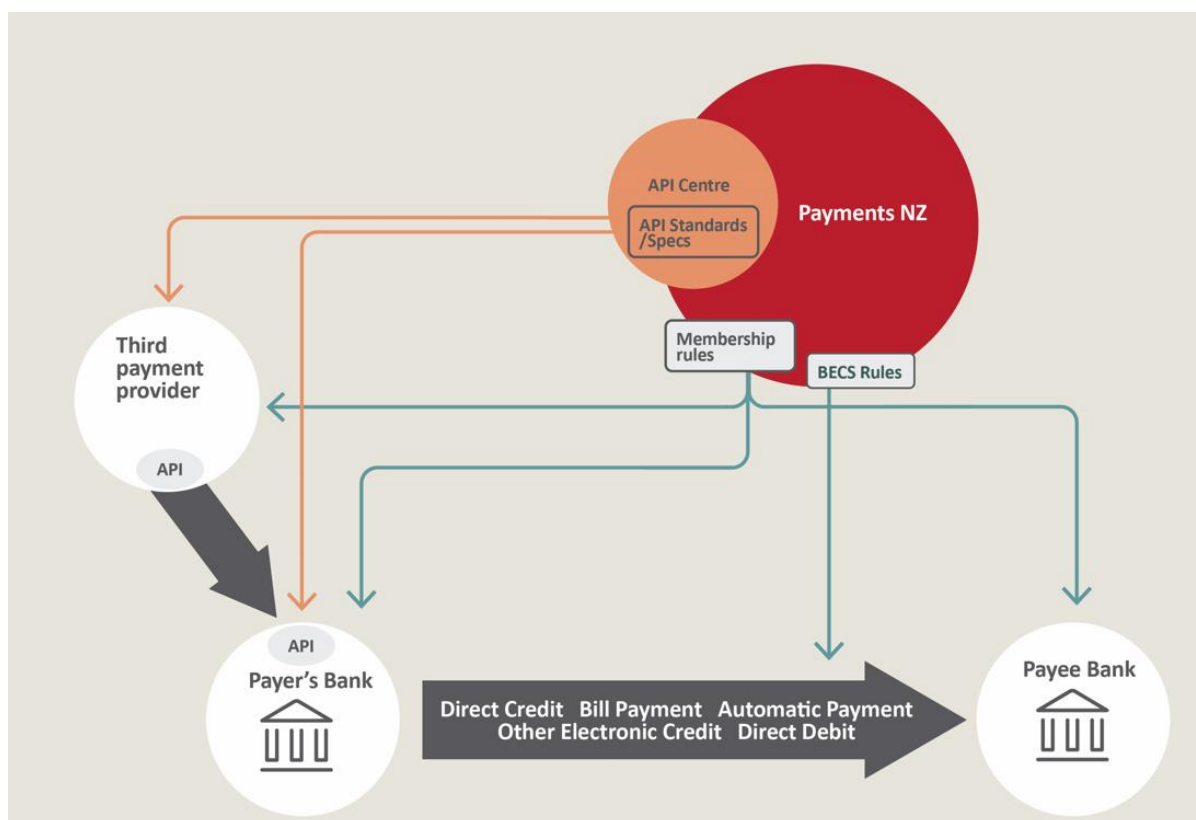
- 4.1 In our request for views paper we included our preliminary definition for the proposed designation of the interbank payment network, identified Payments NZ as an operator of the interbank payment network, and considered the likely participants and rules that govern the interbank network.
- 4.2 Having sought views, we now propose that the interbank payment network be defined as including all bank payment instruments between Registered Banks or within a Registered Bank for the payment of goods or services initiated by either a consumer or a merchant as payee and where payment instructions are sent directly to the payer's bank. This includes all payment instruments, such as direct credits and direct debits, irrespective of the method of initiation and (as an example) a consumer either directly or indirectly initiating a payment through a third party.

Proposed designation

Proposed designation of the interbank payment network:

1. The retail payment network known as the interbank payment network of which—
 - (a) the person known as Payments New Zealand is a network operator
 - (b) the network rules include the rules (as updated from time to time) called:
 - (i) the BECs Rules that relate to payment instruments,
 - (ii) the Payments NZ membership rules that relate to the BECS participants
 - (iii) the Payments NZ membership rules that relate to the API Centre members,
 - (iv) the API Centre API Standards and non-functional guidelines, frameworks and policies
 - (c) The payment products include all BECS governed payment instruments.
 - (d) The participant classes include:
 - (i) Registered banks in NZ
 - (ii) Third party payment providers
2. This designation order continues in force until the date on which the order expires (being no later than 10 years after the date on which the order commences) or it is revoked or replaced.

Figure 4.1 Proposed designation



4.3 Figure 4.1 captures the proposed designation and our key areas of interest in the API enabled interbank network. You will note that our focus is on the interaction between third parties and banks together with aspects relating to the sending of payment instructions. For clarity, for the time being we are not interested in the instructions themselves or the wider infrastructure that processes those instructions, being ESAS or SBI.

Our reasons for defining the interbank payment network in this way

4.4 In forming our proposed definition we have considered stakeholder feedback through the request for views paper⁹⁴ on the scope of the definition and specific concerns:

- 4.4.1 that the interbank payment network definition should not be too broad;
- 4.4.2 of there being potential overlap with future regulatory functions such as the Consumer and Product Data Bill and existing regulatory functions such as the FMI Act which may create a complex open banking framework.

⁹⁴ Commerce Commission "Retail payment system – Request for views on payments made over the interbank payment network" (31 July 2023), available at https://comcom.govt.nz/__data/assets/pdf_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf

- 4.5 In our view, the proposed definition must be sufficiently broad to promote the purpose and principles of the Act including:
- 4.5.1 realising the benefits of additional competition and increased efficiency are realised;
 - 4.5.2 effective monitoring of the interbank payment network;
 - 4.5.3 promoting transparency and reasonableness of fees of the interbank payment network;
 - 4.5.4 consistent application of any regulatory intervention across interbank payments and, if necessary, addressing issues with sub-optimal non-API interbank payment instruments that are currently in use and/or participation in the interbank payment network; and
 - 4.5.5 that whilst these payments currently use SBI for clearing, it is possible that some of the payment instruments may use a new clearing system if the Next Generation payment system⁹⁵, as proposed by Payments NZ, is in operation. Likewise, there may be new payment instruments developed in which API functionality would benefit consumers and merchants.
- 4.6 We consider Payments NZ Limited to be the governing body responsible for the development and management of the network rules and is therefore a network operator under the proposed designation.
- 4.7 In forming our views on the classes of participants we have considered stakeholder feedback and removed the distinction between direct and indirect participants. The proposed definition of the interbank payment network captures all interbank payment instruments between Registered Banks or within a Registered Bank whether or not facilitated by third party payment providers.

⁹⁵ Payments NZ “Next generation payments” (accessed March 2023), available at <https://www.paymentsnz.co.nz/our-work/next-generation-payments/#:~:text=A%20cornerstone%20of%20many%20modernisation,and%20cross%2Dborder%20payment%20corridors.>

Interactions with the FMI Act

- 4.8 As discussed in paragraph 2.11 we are obliged to consult with the RBNZ. Furthermore, the Act defines network infrastructure⁹⁶ as being infrastructure that is necessary for the provision of the network's payment services. This means that any retail payment network that involves payments between different banks is likely to use the financial market infrastructure required to clear and settle payments between two different banks i.e. SBI and ESAS.
- 4.9 We are consulting with the RBNZ and have sought their response in relation to our proposed designation.⁹⁷ This involves consulting RBNZ with regard to ESAS as it is a designated FMI and the consultation is therefore a requirement under the Act. In our consultation with the RBNZ we have also discussed SBI as it is an FMI that could be designated in the future. While there may be a technical regulatory overlap between the proposed designation and the FMI Act due to the broad definition of network infrastructure in the Act, the scope of our proposed designation does not in itself create any regulation and therefore there would be no regulatory overlap as an immediate consequence of the proposed designation.
- 4.10 For clarity, whilst the current designations of the Visa and Mastercard networks use both SBI and ESAS (as network infrastructure) for most payments, we see no need for regulation of either ESAS or SBI now. This is true for the proposed designation as well. Our focus is competition and efficiency between the class of participants known as third parties and banks whereas the RBNZ's focus is on the resilience and security of critical financial infrastructure.
- 4.11 We see the proposed designation as being complementary to the powers and duties the RBNZ has under the FMI Act and we continue to engage with the RBNZ on the scope of our payments work generally. We will consult with the RBNZ specifically in the event a designation order is made and if any subsequent regulation is developed in relation to ESAS, SBI or any system designated as an FMI.

Interactions with the Consumer and Product Data Bill (CDR)

- 4.12 We referenced the interaction of regulatory interventions in relation to the Consumer and Product Data Bill and the proposed designation in our request for views paper and note that there remains uncertainty as to when the Consumer and Product Data Bill will become law and the extent of regulatory overlap.
- 4.13 We continue to engage with MBIE on our proposed designation and on their work on a framework for the CDR regime.

⁹⁶ Retail Payment System Act, s7.

⁹⁷ Retail Payment System Act, s12(2)(c) and s13(1)(a).

- 4.14 We consider that any investment made through ongoing industry-led options which have a consumer and merchant lens and are progressed in parallel with proposed regulatory interventions (such as the Consumer and Product Data Bill), are expected to be adopted as a starting point. In any event, and as discussed in paragraph 3.77, our proposed designation if approved in the shorter term will inform the later CDR regime.
- 4.15 We believe that our proposed designation will provide the five largest banks with sufficient impetus to continue to develop APIs which, in turn, will provide certainty on API development to third party participants.
- 4.16 There is no regulatory duplication between the proposed designation and CDR regime at present and we believe that the perceived risk of any regulatory intersection in future (which would require further consultation) is outweighed by the need for increased certainty for participants now.
- 4.17 As the Consumer and Product Data Bill framework develops, we will continue to consult with MBIE to address any issues identified in respect of API enabled interbank payments and the wider CDR regime.

Chapter 5 Consultation questions

- 5.1 This section lists the questions we are seeking industry and stakeholder feedback on. If you would like to make a longer written submission, please see the response template provided as a separate document on our [website](#). If you would like to provide shorter answers, we recommend submitting using through our dedicated SurveyMonkey [form](#). Please note that we intend to publish all submissions.

Questions on our proposal to recommend the interbank payment network is designated

- 1 Do you agree with our preliminary position that designation of the interbank payment network will promote competition and efficiency in the retail payment system for the long-term benefit of consumers and merchants? If not, why not?**

High level snapshot of our position:

- X12 The Commission considers that a designation would be the minimum reasonable intervention required to:
- X12.1 encourage timely delivery and adoption of a thriving API enabled payment ecosystem;
 - X12.2 encourage lower barriers to partnerships between third party providers and the banks;
 - X12.3 ensure the financial sector is well placed to adopt the measures and standards to support the uptake of the CDR regime; and
 - X12.4 allow the Commission to intervene in future if necessary to promote competition and efficiency.

Relevant sections: Executive summary, Chapter 3

- 2 Do you agree that there are features of the interbank payment network that are reducing or likely reducing competition and efficiency of the network or the system?**

High level snapshot of our position:

- 3.72.1 A feature of the development of new payment methods on the interbank payment network is that it requires the five largest banks to collectively deploy APIs and partner with third parties (see paragraph 3.56), and as we discuss at paragraphs 3.53 to 3.57, we believe incentives are mixed.

Relevant sections: Executive summary, Chapter 3

- 3 Do you agree that there is conduct of participants of the interbank payment network that are reducing or likely reducing competition and efficiency of the network or the system?**

High level snapshot of our position:

- 3.51 As discussed in our open letter, whilst we are currently in a period of momentum, we have observed this in the past, only for momentum to stall. For example, previous governments have set expectations for bank progress, however despite industry talking about API development and implementation for several years, progress has been slow.⁶⁶

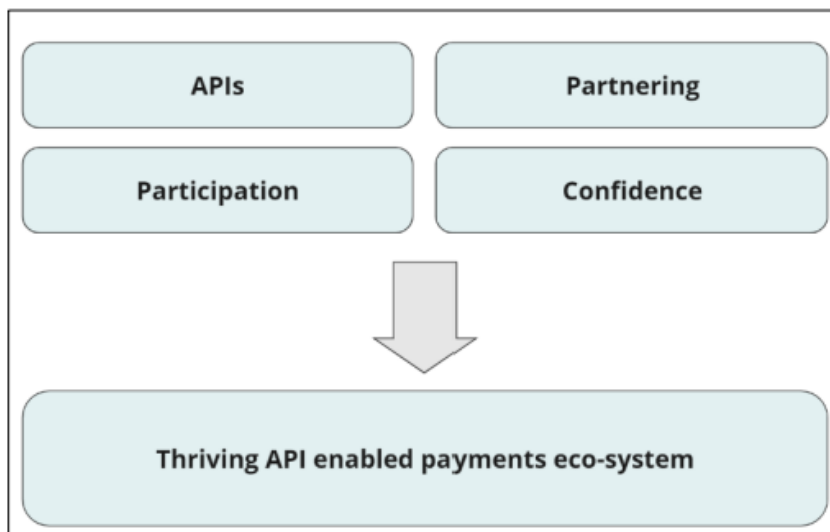
	<p>3.72.2 We are also concerned by how some banks are approaching access arrangements with third parties (see paragraphs 3.58 to 3.59).</p> <p>Relevant sections: Executive summary, Chapter 3</p>
<p>4</p>	<p>Are there any other features of the interbank payment network or any conduct of participants that are relevant to our consideration to propose designation?</p>
	<p>Relevant sections: Executive summary, Chapter 3 (paragraphs 3.50 – 3.74 are most relevant)</p>
<p>5</p>	<p>Do you agree with our characterisation of the nature of the interbank payment network? By ‘nature’ we mean the number, value, and nature of the transactions that the network currently processes or is likely to process in the future of the payments.</p>
	<p>High level snapshot of our position:</p> <p>3.45 The interbank payment network is widely used for payments in New Zealand and the scale is significant. The value of payments between different bank accounts in 2023 was \$1.75 trillion, and the number of transactions was 653.8 million.⁵⁹ We note this excludes payments between two customers at the same bank.⁶⁰ Figure 3.2 below shows the considerable size of the network, in terms of value and volume of all interbank payments, and that this has been increasing through time.</p> <p>3.46 We expect the interbank payment network to continue to be widely used for payments in the future. This is due to the reliance on bank transfers for a wide range of common payments, such as wages, invoices, dividends, ongoing mortgage and rent payments, rates, insurance, telephone, and power bills.⁶²</p> <p>Relevant sections: Executive summary, Chapter 3 (paragraphs 3.44 – 3.49)</p>
<p>6</p>	<p>Are there any other aspects of the nature of the network that are relevant to our consideration to propose designation?</p>
	<p>Relevant sections: Executive summary, chapter 3 (paragraphs 3.42 – 3.47)</p>
<p>7</p>	<p>Do you agree with our assessment of the potential interaction between the proposed designation and the FMI Act and CPD Bill?</p>
	<p>High level snapshot of our position:</p> <p>4.11 We see the proposed designation as being complementary to the powers and duties the RBNZ has under the FMI Act and we continue to engage with the RBNZ on the scope of our payments work generally. We will consult with the RBNZ specifically in the event a designation order is made and if any subsequent regulation is developed in relation to ESAS, SBI or any system designated as an FMI.</p> <p>4.16 There is no regulatory duplication between the proposed designation and CDR regime at present and we believe that the perceived risk of any regulatory intersection in future (which would require further consultation) is outweighed by the need for increased certainty for participants now.</p> <p>3.92 Our view remains unchanged from our request for views paper that both our proposed designation and the CDR regime is expected to use the API standards developed through Payments NZ as a starting point and are, therefore, likely to be complementary.</p> <p>Relevant sections: Executive summary, Chapter 4</p>

8	Apart from the FMI Act and the Consumer Data Rights Bill, are there any other statutory considerations you consider relevant to our proposal to recommend designating the interbank payment network?
Relevant sections: Chapter 4	
9	Do you agree with our definition of the proposed designation? If not, why not?
<div style="border: 1px solid black; padding: 10px;"> <p>Proposed designation of the interbank payment network:</p> <ol style="list-style-type: none"> 1. The retail payment network known as the interbank payment network of which— <ol style="list-style-type: none"> (a) the person known as Payments New Zealand is a network operator (b) the network rules include the rules (as updated from time to time) called: <ol style="list-style-type: none"> (i) the BECs Rules that relate to payment instruments, (ii) the Payments NZ membership rules that relate to the BECS participants (iii) the Payments NZ membership rules that relate to the API Centre members, (iv) the API Centre API Standards and non-functional guidelines, frameworks and policies (c) The payment products include all BECS governed payment instruments. (d) The participant classes include: <ol style="list-style-type: none"> (i) Registered banks in NZ (ii) Third party payment providers 2. This designation order continues in force until the date on which the order expires (being no later than 10 years after the date on which the order commences) or it is revoked or replaced. </div>	
Additional optional questions	
10	Do you agree New Zealand has not implemented a thriving API enabled payment ecosystem?
Relevant sections: Chapter 3 (paragraph 3.42)	
11	Do you agree new payment methods through API enabled payment ecosystems are becoming more prevalent overseas? And do you agree with how we have characterised the nature and benefits of these systems?
Relevant sections: Chapter 3 (paragraphs 3.21 – 3.22)	
12	Do you agree there is significant unmet demand in New Zealand for innovative new payment methods enabled by a thriving API enabled payment ecosystem?
Relevant sections: Chapter 3 (paragraphs 3.23 – 3.34)	

13 Do you agree with our characterisation of the minimum requirements for a functional API enabled payment ecosystem?

High level summary of our position:

Figure A1: Minimum requirements for a thriving API enabled payments ecosystem



Relevant sections: Our open letter (Annex A), Chapter 3 (paragraphs 3.39 – 3.42)

14 Do you agree with our concerns regarding the timeliness, partnering, transparency, and reasonableness of fees of the API enabled ecosystem that uses any undesignated interbank payment network?

High level snapshot of our position:

- X8 In particular, the Commission is concerned that:
- X8.1 a feature of the interbank payment network is that it is not only Payments NZ as an operator of the network, but the banks which must all collectively implement the ecosystem. The incentives to deploy a thriving API enabled payment ecosystem are mixed for banks;
 - X8.2 there is a risk that a single large bank can use access arrangements and pricing as a barrier to inhibit the timeliness of widespread adoption; and
 - X8.3 the combination of these factors will lead to delay or uncertainty in the delivery of the minimum requirements for a thriving API enabled ecosystem. Not only would this reduce the significant benefits to merchants and consumers, but it is likely to affect future investment into the payment system which will further be detrimental to merchants and consumers.

Relevant sections: Executive summary, Chapter 3

15	<p>Do you agree with how we've characterised the innovative new products and services for businesses within an API enabled ecosystem? And are there any other products and services for businesses you would like to draw our attention to?</p>
<p>Snapshot of our characterisation, where some examples include:</p> <p>3.27.1 POLi – POLi provides consumers with a correctly prefilled bank transfer to the merchant for their approval. POLi has reported an average monthly customer usage of 500,000 consumers.⁴²</p> <p>3.27.2 Akahu – Akahu is an intermediary which provides other third parties with access to a range of banks (the third party still requires the consumer's consent). Some of the third parties that have connected to Akahu include:</p> <p>3.27.2.1 PaySauce, a third party provider of payroll services for employers;⁴³</p> <p>3.27.2.2 Dolla, a payments app for customers and businesses;⁴⁴</p> <p>3.27.2.3 Tiger Brokers, an online broker which offers consumers a mobile trading app to make investments;⁴⁵</p> <p>3.27.2.4 Employment Hero, a third party provider of a HR, payroll, and benefits platform;⁴⁶</p> <p>3.27.2.5 myRent, a third party provider which offers a platform for NZ self-managing landlords to advertise and manage their rental properties;⁴⁷ and</p> <p>3.27.2.6 PayHero, a third party provider of payroll services for employers.⁴⁸</p> <p>Relevant sections: Chapter 3 (paragraphs 3.23 – 3.33)</p>	
16	<p>Do you have any other comments you would like to make?</p>

Attachment A Themes from submissions from our request for views paper

- A1 In our request for views paper, we sought feedback on how we can support the development of a thriving API enabled payments ecosystem and how we had characterised and considered our four main concerns regarding the big banks adoption of APIs (timeliness, access arrangements, transparency, and reasonable fees).
- A2 Some industry and stakeholder feedback to our request for views paper is detailed in the main body of this consultation paper, this section presents further industry and stakeholder feedback.

How to achieve a thriving API enabled payment system

- A3 Our request for views paper sought feedback on how we can support the development of a thriving API enabled payments ecosystem, and how we could use our regulatory powers to address the potential barriers to this development.⁹⁸
- A4 We heard broadly three different perspectives on how to achieve a thriving API enabled payments ecosystem in New Zealand. We set out a range of views gathered through our submission process below.

Kiwibank questioned the appropriateness of open banking and considered that we should leave any development of the API enabled payments ecosystem to industry

- A5 Kiwibank, for example, questioned the appropriateness of open banking for the New Zealand economy, and considered a cost-benefit analysis of the investment is required:⁹⁹

Kiwibank supports a first principles review of open banking, including a cost-benefit analysis (...) A regulatory sandbox could also help to test the viability of novel use cases. Without this, we consider there is a real risk that Aotearoa's open banking framework is inappropriate for the relatively small size of the market, over capitalised, and underutilised.

⁹⁸An API is a set of routines, protocols, and tools for building software applications. An API specifies how software components should interact.

⁹⁹ Kiwibank "Kiwibank Submission on Retail Payments Between Bank Accounts" (9 October 2023), paragraph 12, available at https://comcom.govt.nz/__data/assets/pdf_file/0026/332792/Kiwibank-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-9-October-2023.pdf

A6 Kiwibank also noted that the Payments NZ industry implementation plan gives certainty APIs will be delivered:¹⁰⁰

In the consultation paper, the Commission expresses the view that the minimum delivery dates in the implementation plan are not ambitious enough, and that there is nothing to prevent these timeframes from being extended.

Kiwibank does not agree with that assessment for three reasons. First, this is the first time that Payments NZ participants have publicly committed to binding implementation timeframes for delivering API standards. With public commitment comes accountability. There will be commercial and reputational impacts for any member of the API Centre that does not meet the agreed dates in the implementation plan... Secondly, the implementation plan was the subject of extensive consultation and has the buy-in of participants. Banks have been able to commit to the timeframes in the plan as they're proportionate and realistic, taking into account other work programmes and competing priorities (both legislative/regulatory and strategic)... Thirdly, in response to the Commission's commentary that the implementation plan is not ambitious enough, we note that it would be very unlikely the proposed regulatory framework could be delivered more quickly than the implementation plan.

A7 Kiwibank expressly opposed any intervention by the Commission to alter Kiwibank's minimum API implementation delivery dates:¹⁰¹

We would strongly oppose any intervention by the Commission to bring forward Kiwibank's minimum delivery dates. It would create an unfair challenge for Kiwibank which does not have the capacity to deliver open API standards any sooner, particularly given the lead-time required for a project of this size and scale, and Kiwibank's existing pipeline of technology change.

Several stakeholders considered we should leave the development of the API enabled ecosystem to industry, supplemented by the future CDR regulation

A8 There was broad consensus among Payments NZ and banks ANZ, ASB, and Westpac that the industry-led work and the CDR regime work should be sufficient to address any barriers to a thriving API enabled payment ecosystem, and that any retail payment system regulation is unnecessary duplication and may have unintended consequences. We note examples of these views below.

¹⁰⁰ Kiwibank "Kiwibank Submission on Retail Payments Between Bank Accounts" (9 October 2023), paragraphs 16 to 17.

¹⁰¹ Kiwibank "Kiwibank Submission on Retail Payments Between Bank Accounts" (9 October 2023), paragraph 21.

A8.1 The network operator, Payments NZ, was also not supportive of network designation and expressed reservations over "greater regulation".¹⁰²

While we support the Commerce Commission's desire to see "new payment options that allow consumers to make payments between bank accounts," we do not support the current proposals to designate the 'retail payment network' and have reservations in relation to the outcomes which could be delivered through greater regulation.

A8.2 ANZ questioned the value of designation.¹⁰³

While comparisons and views have been expressed on the perceived issues of the current environment the Review does not present any clear indication of how designation will deliver any substantive value and/or certainty over and above what is already anticipated.

For example, MBIE's consumer data right (CDR), and Payments New Zealand Limited (PNZ) open API standards, both of which ANZ is fully committed to, will continue to build on an already vibrant environment where new entrants, e.g. Wise can safely launch innovative new options to make (i.e. initiate) bank transfers in New Zealand.

A8.3 ASB questioned the appropriateness and benefit of designation.¹⁰⁴

Introducing new obligations under the RPSA, where similar matters are being considered in the context of the draft CDR Bill, may result in inconsistent frameworks. We also query whether it is appropriate to use designations and standards under the RPSA (secondary legislation) where primary legislation is already in development to address substantively similar matters, subject to the fuller scrutiny and debate that the Parliamentary process brings. Further, any subsequent rework to comply with legislation risks diverting investment away from other customer innovations for no net benefit.

¹⁰² Payments NZ "Payments NZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), paragraph 5. Available at https://comcom.govt.nz/__data/assets/pdf_file/0028/332785/Payments-NZ-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹⁰³ ANZ Bank New Zealand Limited "ANZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), paragraphs 2.4 and 2.5, available at https://comcom.govt.nz/__data/assets/pdf_file/0023/332780/ANZ-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹⁰⁴ ASB Bank Limited "ASB Submission on Retail Payments Between Bank Accounts" (28 September 2023), paragraph 3.1, available at: https://comcom.govt.nz/__data/assets/pdf_file/0025/332791/ASB-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-28-September-2023.pdf

- A8.4 Westpac indicated support for "targeted and balanced intervention" in principle, but also advocated alternative measures should a problem be identified:¹⁰⁵

We would encourage the Commission to consider whether there are other less onerous and more targeted and proportionate solutions available to incentivise and monitor progress, as an alternative to designation under the RPS Act.

- A8.5 We note there was also broad consensus among these banks and Payments NZ that the industry API implementation plan milestones are reasonable and create certainty that the banks will build the open APIs.

- A8.5.1 For example, ANZ submitted that the industry implementation plan provides sufficient certainty:¹⁰⁶

ANZ believes there is sufficient certainty with the ANZ, ASB, BNZ and WBC all committing to the payment initiation and account information dates, by May 2024 and November 2024 respectively and Kiwibank following in 2026. This will capture over 90% of the consumer banking market in 2024.

(...) It is not clear on what basis the Commission believes that 'these dates are not ambitious enough' and we would welcome further insight on what the Commission believe the dates should be and how it expects the API providers and 3rd parties to meet any new requirements.

- A8.6 ASB submitted that the industry implementation plan provides certainty for participants and third party providers:¹⁰⁷

The industry implementation plan creates an agreed timeline for the initial delivery and ensures visibility for stakeholders. Banks are bound by the implementation plan and need to request a formal exemption for any delay in meeting the mandatory dates. The minimum open banking implementation plan therefore provides certainty for participants, as well as for third party service providers.

- A8.7 Payments NZ also considered that the industry API implementation plan creates sufficient certainty that banks will build the open APIs.¹⁰⁸

¹⁰⁵ Westpac New Zealand Limited "Westpac Submission on Retail Payments Between Bank Accounts" (21 September 2023), paragraphs 2.3, 3.1, and 3.6, available at: https://comcom.govt.nz/__data/assets/pdf_file/0029/332777/Westpac-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-21-September-2023.pdf

¹⁰⁶ ANZ Bank New Zealand Limited "ANZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), response to question 16.

¹⁰⁷ ASB Bank Limited "ASB Submission on Retail Payments Between Bank Accounts" (28 September 2023), response to question 16.

¹⁰⁸ Payments NZ "Payments NZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), response to question 16.

The industry implementation plans are binding on the API Providers and therefore create certainty and give confidence to third parties that all API providers are building the same version of the standard. If an API Provider were unable to comply with the plan, it would be required to apply for an exemption from the obligation.

A8.8 Westpac also commented on how any regulation should be implemented:

Westpac supports targeted and balanced intervention: Westpac acknowledges that to date there has been a lack of progress made with respect to the delivery of the PNZ APIs. (...) Westpac believes that any regulatory intervention must be cognisant of any recent progress made and be targeted at, and proportionate to, the nature and extent of the problem that is identified.

Alignment with industry and regulatory initiatives: Any regulation must be cognisant of, and align with the CDR, Payments NZ and FMI workstreams to create an effective and efficient regulatory landscape which promotes innovation.

Various stakeholders considered our involvement is needed to achieve a thriving API enabled payments ecosystem

A9 Among the banks, BNZ was the exception and submitted in favour of network designation to mandate industry implementation plan dates. BNZ submitted that the implementation dates for ANZ, ASB, BNZ and Westpac are appropriate and that these should apply to everyone:¹⁰⁹

The minimum industry implementation dates for ANZ, ASB, BNZ and Westpac are appropriate. If the focus is on consumer or business benefits and not simply dates and technology - the dates should be for all providers of material scale and, if that is the objective, there should not be an extra two years or no implementation date provision.

We support the Commission mandating the implementation dates and creating the same level playing field for everyone.

A10 However, we note that while BNZ expressed support for network designation to make industry implementation plan dates mandatory for all banks, this did not extend to support for other aspects of our proposal:¹¹⁰

¹⁰⁹ BNZ “BNZ Submission on Retail Payments Between Bank Accounts” (25 September 2023), response to question 16, available at: https://comcom.govt.nz/__data/assets/pdf_file/0018/333630/BNZ-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023-.pdf

¹¹⁰ BNZ “BNZ Submission on Retail Payments Between Bank Accounts” (25 September 2023), paragraph 1.12.

(...) BNZ appreciates the aim of the discussion document is to investigate whether regulation under the Retail Payment System Act 2022 could support the financial industry in making account-to-account payments innovation available earlier than the introduction of a CDR and considers this a worthwhile goal. In our view the best way for the Commission to achieve this would be to use its designation powers to mandate the API implementation dates in the Payment NZ API Centre's proposed industry implementation plan. We support the Commission making those dates mandatory for all banks.

A11 Payment providers/fintechs generally agreed that there are barriers to the development of a thriving API enabled payments eco-system that will only be overcome by regulation. They submitted in support for our work to address these barriers in a faster manner than the CDR work could.

A11.1 Akahu, for example, considered that a designation of the interbank network is as a useful first step towards enabling an environment where payment providers can launch innovative new options to make bank transfers in New Zealand. Akahu described the barriers that it considers our regulatory powers would very effectively address:¹¹¹

Yes, we support the proposed designation.

Over the next 3 years, we think it would significantly assist by:

- (i) Applying regulatory pressure on the delivery of APIs.
- (ii) Setting timeframes for delivery from banks that have not yet committed to delivering APIs.
- (iii) Setting the requirements for third party accreditation and terms of access.
- (iv) Providing independent governance of standards development.
- (v) Setting requirements for API performance and consistency that are not currently addressed in industry standards.

As acknowledged in the consultation paper, the Customer and Product Data Bill is likely to address the same issues that are targeted through the proposed designation. If the incoming regulation delivers its intended outcomes in due course, we think that Commerce Commission should consider whether its designation is still required.

A11.2 Volley also submitted that a designation of the interbank network is as a useful first step and considered our regulatory powers would be effective at addressing these barriers:

¹¹¹ Akahu "Akahu Submission on Retail Payments Between Bank Accounts", page 8, available at https://comcom.govt.nz/__data/assets/pdf_file/0030/332787/Akahu-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

We believe the Commission's powers to be sufficient to effectively address the mentioned barriers and encourage the approach of applying powers to help drive and support the industry-led efforts undertaken by Payments New Zealand and the API Centre.

A12 We note that participants at our joint innovation roundtable generally agreed that regulatory intervention in some form is necessary to ensure sufficient certainty that the API eco-system will develop. Participants were supportive in principle and/or directly supportive of proposals such as designation of the interbank payment network.¹¹² Several participants noted their support for network designation expressly.

A12.1 We note that Worldline, like BNZ, supported designation to mandate API implementation timeframes with some caveats:¹¹³

We strongly support the NZCC's aim of promoting competition and innovation in account-to-account payments. We support the proposed designation of the IPN although we consider it important that the designation be deployed in a narrow and focused way.

We would be more supportive of an approach whereby designation of the IPN targeted expedition of the banks' implementation of the API Centre's standards and, if necessary, provided an additional incentive to banks to meet implementation deadlines under the CPD Bill in due course.

A12.2 Revolut is another example of a payment provider that submitted in support:¹¹⁴

We fully support the New Zealand Commerce Commission in designating the network for payment services. By designating the network, the Commission can help create an environment where all participants, including new entrants and existing players, have equal access to essential payment infrastructure in a timely manner. This designation will help to reduce the risk of delays in CDR implementation. We agree that the Commerce Commission retail payment system regulatory powers can be complementary to the New Zealand Government's work via the Customer and Product Data Bill.

¹¹² FinTechNZ Innovation Roundtable, consultation on our Request for views paper, page 2, available at https://comcom.govt.nz/__data/assets/pdf_file/0031/332797/Commerce-Commission-summary-of-the-FinTechNZ-Innovation-Roundtable-Shaping-Future-Retail-Payments-19-September-2023.pdf

¹¹³ Worldline "Worldline Submission on Retail Payments Between Bank Accounts" (25 September 2023), paragraphs 3 and 22, available at https://comcom.govt.nz/__data/assets/pdf_file/0026/332783/Worldline-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹¹⁴ Revolut "Revolut Submission on Retail Payments Between Bank Accounts" (9 October 2023, page 2, available at https://comcom.govt.nz/__data/assets/pdf_file/0028/332794/Revolut-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-9-October-2023.pdf

Timeliness of delivery

- A13 In our request for views paper, we expressed support for the publication of the API industry implementation plan but noted our concern that progress will continue to stall given the lack of progress from banks since the API Centre launch, the limited ambitiousness of delivery dates, the non-mandatory API Centre membership, and the unclear enforcement of the implementation plan, and the uncertain incentives.¹¹⁵
- A14 We observed that the five largest banks have historically delivered to API standards at varying speeds, with the API provider (banks) readiness report highlighting that at best only two banks had built APIs to any one version of the open API standards.¹¹⁶

Stakeholder views

- A15 On the issue of timeliness of API development, payment providers and fintechs generally considered that the existing API standards are a good starting point but that development needs to be faster to keep pace with innovation. These third parties also considered that the industry implementation plan does not create sufficient certainty of delivery given the lack of meaningful consequence for non-compliance.
- A15.1 Participants at our joint innovation roundtable generally considered the industry implementation plan does not create sufficient certainty that the banks will build the open APIs given it is not mandated and timelines have not been maintained historically. Participants expressed that the lack of enforceability, the non-mandatory nature of API Centre membership and the exemption process all contribute to this low confidence.¹¹⁷
- A15.2 There was also an overall sentiment among participants that the industry implementation plan milestone dates are not ambitious enough, including both the delivery dates and the API version committed to.¹¹⁸ Participants

¹¹⁵ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), paragraphs 4.16 to 4.22, available at https://comcom.govt.nz/__data/assets/pdf_file/0016/323602/Retail-Payment-System-Payments-Between-Bank-Accounts-Request-for-views-paper-31-July-2023.pdf

¹¹⁶ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), paragraphs 4.1 to 4.3.

¹¹⁷ FinTechNZ Innovation Roundtable, consultation on our Request for views paper, page 6.

¹¹⁸ FinTechNZ Innovation Roundtable, consultation on our Request for views paper, page 6.

considered that New Zealand is behind the rest of the world in API implementation milestones and partnering by several years.¹¹⁹

- A15.3 The participants indicated that there are also several important aspects that are not captured in the implementation plan, including mandatory performance standards for the APIs and testing of the APIs, so that even if they are built by the dates, it does not mean they are standardised or commercially viable.¹²⁰
- A15.4 Payment provider Akahu, in its submission on our request for views paper, submitted for example:¹²¹

We think that industry-led API standards will enable some innovation.

However we are concerned that some innovation will be hampered if standards development remains controlled by industry. For example, many implementations of bill payment services, peer-to-peer payment services, payroll payment services, request-to-pay, refunds, and automated payouts require an enduring payment consent which is not limited to specified destination accounts. We are concerned that banks may choose to not support this functionality through industry-controlled standards development.

We think that more value will be unlocked for consumers if standards development is managed independently from industry.

- A16 Except for BNZ, who has already met the API implementation date, the remaining largest banks generally submitted that whilst they are committed to the agreed API implementation dates, they face complex challenges involving legacy systems, finite resources, competing regulatory requirements and concern over customer experience which have resulted in delays.¹²²

¹¹⁹ FinTechNZ Innovation Roundtable, consultation on our Request for views paper, page 7.

¹²⁰ FinTechNZ Innovation Roundtable, consultation on our Request for views paper, page 7.

¹²¹ Akahu “Akahu Submission on Retail Payments Between Bank Accounts”, page 5.

¹²² ANZ Bank New Zealand Limited “ANZ Submission on Retail Payments Between Bank Accounts” (25 September 2023), response to questions 8, 14 to 15; ASB Bank Limited “ASB Submission on Retail Payments Between Bank Accounts” (28 September 2023), paragraph 3(g), and response to question 15; Kiwibank “Kiwibank Submission on Retail Payments Between Bank Accounts” (9 October 2023), paragraph 17; Westpac New Zealand Limited “Westpac Submission on Retail Payments Between Bank Accounts” (21 September 2023), paragraphs 2.3(a), 3.5, and 3.9 to 3.9(e).

Partnering

A17 In our request for views paper, we expressed our concern that industry progress on developing efficient payment provider access processes has stalled.¹²³ We proposed that one of the key barriers to innovative options to make bank transfers is a lack of progress on agreeing reasonable access terms and conditions for partnering between banks and payment providers.¹²⁴

Stakeholder views

A18 We note, for example, that partnering fees at the point of access to the API ecosystem, were a key concern for numerous participants at our joint fintech roundtable. These concerns related to the level of the fees as well as the negotiation process, among other things. Examples include:¹²⁵

It is slow and cumbersome to engage with multiple banks separately and negotiate terms and price with each. Even large payment companies have taken multiple years to reach agreements with the banks for bespoke API access and they had to give up significant commercial terms.

A participant noted that if banks do give you access, they can charge you whatever amount they want. So, they can charge you in a way that does not make your business work [ie, foreclosure]. Other participants indicated strong support for this comment.

“Software upgrades” are an excuse for high fees and industry are just taking it on the chin. Need to look at history of this and look at actual costs. Too much power in banks’ hands.

A18.1 We also note the concerns of the payment provider Akahu in relation to what it sees as one bank's refusal to partner.¹²⁶

¹²³ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), paragraphs 4.23 to 4.26.

¹²⁴ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), table 4.1.

¹²⁵ FinTechNZ Innovation Roundtable, consultation on our Request for views paper, pages 8 and 11.

¹²⁶ Akahu “BNZ: Open banking APIs are still not available” (29 September 2022), available at <https://www.akahu.nz/newsroom/bnz-apis-not-available>

A19 The prevailing view amongst the five largest banks through the request for views submission process was an acknowledgement that there was some further work to do to efficiently partner with third party payment providers. However, they believe that the Commission's consideration of the Payments NZ authorisation application to be the appropriate response.¹²⁷

Transparency

A20 In our request for views paper, we proposed that one of the key barriers preventing innovative options to make bank transfers is a lack of transparency on banks intentions to build open APIs.¹²⁸ We also noted that we must consider the principle that the retail payment system provides a reasonable degree of transparency to the extent we consider it is relevant.¹²⁹

Stakeholder views

A21 We received mixed submissions on our request for views paper on themes relating to transparency.

A22 For example, Payments NZ provided research-based information showing that transparency has been a key challenge to third party providers. Payments NZ submitted that "lack of knowledge, expectations, and transparency within the process" is among the thematic challenges, which largely remain in place.¹³⁰

A23 At the same time, Payments NZ indicated that it does not consider network designation will deliver the outcomes we are seeking to promote and notes its own capabilities including those relating to promoting transparency.¹³¹

¹²⁷ ANZ Bank New Zealand Limited "ANZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), paragraph 14, and in response to questions 9, 13, 18 to 19; ASB Bank Limited "ASB Submission on Retail Payments Between Bank Accounts" (28 September 2023), response to question 19; BNZ "BNZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), response to questions 19 and 20; Kiwibank "Kiwibank Submission on Retail Payments Between Bank Accounts" (9 October 2023), paragraphs 3 and 5(a); Westpac New Zealand Limited "Westpac Submission on Retail Payments Between Bank Accounts" (21 September 2023), paragraph 3.9(b).

¹²⁸ Commerce Commission "Retail payment system – Request for views on payments made over the interbank payment network" (31 July 2023), table 4.1.

¹²⁹ Commerce Commission "Retail payment system – Request for views on payments made over the interbank payment network" (31 July 2023), paragraphs 1.9.2 and 5.3.2.

¹³⁰ Payments NZ "Payments NZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), response to question 18.

¹³¹ Payments NZ "Payments NZ Submission on Retail Payments Between Bank Accounts" (25 September 2023), response to questions 28 and 29.

A24 Some banks such as ASB, while not supporting designation, consider that increased transparency of the API implementation plan will help to address barriers to an API enabled ecosystem. For example, ASB stated:¹³²

We do not consider that designation of the interbank payment network under the RPSA is necessary for the reasons outlined above. The barriers identified in the Paper can be better addressed through the voluntary industry-led efforts of the API Centre. In particular, increased transparency of the API implementation plan will provide certainty in the industry.

A25 We note support from other stakeholders for transparency, including from the multinational fintech Visa, who submitted:¹³³

In addition, we support transparency and clarity serving as guiding principles to drive adoption.

Reasonable fees

A26 In our request for views paper, we proposed that one of the key barriers preventing innovative options to make bank transfers is a lack of progress on agreeing reasonable access terms and conditions for partnering between banks and payment providers.¹³⁴ We also noted that we must consider the principle that merchants and consumers should pay no more than reasonable fees for the supply of payment services to the extent we consider it is relevant.¹³⁵

Stakeholder views

A27 We received submissions on themes relating to the principle that merchants and consumers should pay no more than reasonable fees.

A27.1 Retail NZ, an industry body representing retailers across Aotearoa was supportive of our proposal as a mechanism to bring about lower fees for merchants in NZ.¹³⁶

¹³² ASB Bank Limited “ASB Submission on Retail Payments Between Bank Accounts” (28 Sep 2023) available at: https://comcom.govt.nz/__data/assets/pdf_file/0025/332791/ASB-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-28-September-2023.pdf

¹³³ VISA “Visa submission on Retail Payments Between Bank Accounts” (25 Sep 2023), available at https://comcom.govt.nz/__data/assets/pdf_file/0030/332796/Visa-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹³⁴ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), table 4.1.

¹³⁵ Commerce Commission “Retail payment system – Request for views on payments made over the interbank payment network” (31 July 2023), paragraphs 1.9.1 and 5.3.1.

¹³⁶ Retail NZ “Retail NZ Submission on Retail Payments Between Bank Accounts”, paragraphs 2 to 3, and response to question 29, available at https://comcom.govt.nz/__data/assets/pdf_file/0027/332793/Retail-NZ-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-10-October-2023.pdf

Retail NZ has long advocated for lower payments fees for merchants and a more efficient and transparent retail payments system.

We strongly supported regulation under the Retail Payments System Act and the Commerce Commissions role promoting competition and efficiency within the retail payments system. We are also supportive of this new piece of work which we believe will bring real benefits to retailers and consumers.

(...) Yes, Retail NZ supports the Commerce Commission seeking the designation of the 'interbank payment network' (with a definition that includes intrabank payments) as the necessary first step towards regulating this part of the retail payment system. It would address the competition issues that have been identified and will ultimately bring about lower fees option for merchants accepting payments.

A27.2 Merco, a third party payment provider, expressed concern with current industry settings and submitted that merchants would not accept the fees necessary to meet the access fees currently proposed by some banks.¹³⁷

Charging a fee for access to the payment system as currently advocated by the industry is not warranted and it is disruptive.

In our experience the existing model is largely not viable at scale. POLi processes approximately 500,000 transactions a month and while this volume is relatively low the existing pricing models would require an increase in Merchant fees not just an increase but many times the existing level. Merchants would not accept the required level of fee increase necessary to meet the fees proposed by some banks.

A27.3 ASB noted that third party payment providers may charge merchants and consumers for increased functionality:¹³⁸

In addition, while account to account bank transfers initiated through bank channels currently incur low or no fees as stated in table 3.1, where such payments are facilitated via payment providers with additional features, it is likely that merchants or consumers may be charged fees for those services.

A27.4 BNZ similarly submitted that fees to merchants would generate incentives for innovators in open banking API payments, including for in store consumer to merchant payments:¹³⁹

¹³⁷ Merco Ltd. "Merco Submission on Retail Payments Between Bank Accounts" (25 September 2023), available at https://comcom.govt.nz/__data/assets/pdf_file/0031/332788/Merco-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹³⁸ ASB Bank Limited "ASB Submission on Retail Payments Between Bank Accounts" (28 Sep 2023), response to question 6.

¹³⁹ BNZ "BNZ Submission on Retail Payments Between Bank Accounts" (25 September 2023).

Innovators will be able to charge fees to provide them with the incentive to provide such a service, mindful of finding a price point that works for merchants and consumers.

A27.5 Others discussed the downstream benefits generally to consumers of increased competitive pressure. For example, fintech Volley submitted:¹⁴⁰

As stated, bank transfers benefit from fast settlement and low fees for participants. Our interbank payment network is already successfully used for other use cases such as direct debit, direct credits, bulk payments, and others.

Enabling payments between bank accounts via fast, secure and standardised APIs is an essential first step for allowing payment providers to innovate on the consumer experience and allow the benefits of bank transfer payments to be more widely applied in different environments. Access to the network also ensures third-parties can more easily enter the market and increase competitive pressure with new innovations.

A27.6 Many stakeholders raised incentives as a key consideration in relation to access fees. For example, one participant at our fintech workshop stated:¹⁴¹

Need to understand the cost to the banks or security risk and what will make them interested. We can use the regulatory encouragement stick, but need a market-based industry incentive (fees) to promote uptake for bank use that will deliver API use and create opportunities to develop and present solutions for the public.

A27.7 Worldline also submitted on bank incentives in relation to fees:¹⁴²

Banks are incentivised financially to issue and acquire Scheme products. As Eftpos and contact debit products do not bring in fee revenue, banks are not incentivised to issue, or support and invest in, these products.

A27.8 Banks submitted against pricing standards and limits on access fees, and submitted for flexibility in pricing models. For example, ASB submitted:¹⁴³

¹⁴⁰ Volley “Volley Submission on Retail Payments Between Bank Accounts” available at https://comcom.govt.nz/_data/assets/pdf_file/0029/332795/Volley-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf

¹⁴¹ FinTechNZ Innovation Roundtable, consultation on our Request for views paper.

¹⁴² Worldline “Worldline Submission on Retail Payments Between Bank Accounts” (25 September 2023).

¹⁴³ ASB Bank Limited “ASB Submission on Retail Payments Between Bank Accounts” (28 Sep 2023).

In addition, the proposed pricing standards and limits on access fees are unnecessary and inappropriate: open APIs are being developed for many more use cases beyond just retail payments. The scope of API use is therefore not aligned with the concept of limiting fees for retail API access. In addition, it is possible that fees will be charged by third parties to merchants and/or consumers. Consideration would need to be given to effectiveness of regulation on such fees for retail payments, in addition to fees between banks and third parties. Relatedly, the total cost to a bank of servicing API connectivity would include variable and fixed components, which would vary widely between the type of API services, the type of third party use cases, volumes, and the support levels offered by the banks. Flexibility in pricing models better suits innovation objectives.

Other regulatory requirements

- A28 In our request for views paper, we asked respondents if there are any other regulatory requirements in New Zealand that we should consider in deciding whether to recommend designating the interbank payment network.
- A29 We asked respondents this question again in this consultation paper to further gather respondents' views.

Stakeholder views

- A30 Most submitters on our request for views paper did not answer this question. The largest banks and Payments NZ discussed consideration of the FMI Act, the Privacy Act, the CDR Bill, the Digital Identity Services Trust Framework Act 2023, the Fair Trading Act, the Anti Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act), and ARPA regulations. Worldline discussed the CDR Bill. Visa discussed regulatory alignment. EasyCrypto also noted the FMI Act.
- A31 The largest banks were concerned about potential regulatory duplication, and considered there was significant overlap between the FMI Act and the Retail Payments Systems Act. They advocated for further consideration of any potential overlap. ANZ wrote:¹⁴⁴
- ANZ suggests that the interconnectivity and overlap with the FMI Act and the Retail Payment Systems Act requires further discussion.
- A32 The largest banks questioned the Commission's view that the proposed designation would be complementary to the emerging CDR Bill. They considered the Commission should take the Privacy Act and the Digital Identity Services Trust Framework Act 2023 into account.

¹⁴⁴ ANZ Bank New Zealand Limited "ANZ Submission on Retail Payments Between Bank Accounts" (25 September 2023).

A32.1 ASB wrote:¹⁴⁵

(...)[I]t is imperative that such designations align with existing regulatory frameworks to ensure consistency and to avoid regulatory duplication. Specifically, any designations should align with the proposed CDR framework, as well as any privacy laws (as amended by the CDR reforms) and the Digital Identity Services Trust Framework Act 2023.

A32.2 BNZ wrote: ¹⁴⁶

There appears an urgent need for either direct discussions between the Commission and the RBNZ, the FMA and MBIE, or through the Council of Financial Regulators so there are not multiple designations of the same system with conflicting rules and requirements.

A33 The largest banks considered the Commission should take the AML/CFT Act into account. ANZ wrote:¹⁴⁷

More broadly have the Commission considered how the AML/CFT laws will impact the protection of the consumers systems? The same consideration may also apply to the Prescribed Transaction Reporting Act and potentially more broadly the impact of APRA regulations on the Australian owned banks.

A34 ASB highlighted FTA considerations: ¹⁴⁸

(...)[A]ny RSPA designations should align with the requirements outlined in the Fair Trading Act (FTA). For example, any “fairness” requirements regarding access terms should be consistent with existing Unfair Contract Terms requirements under the FTA.

A35 EasyCrypto discussed FMI Act obligations: ¹⁴⁹

FMI Act and obligations can be extremely onerous on a start up so designation should be thought through carefully and other approaches to support innovation like the MAS regulatory sandbox should be considered.

¹⁴⁵ ASB Bank Limited “ASB Submission on Retail Payments Between Bank Accounts” (28 Sep 2023).

¹⁴⁶ BNZ “BNZ Submission on Retail Payments Between Bank Accounts” (25 September 2023).

¹⁴⁷ ANZ Bank New Zealand Limited “ANZ Submission on Retail Payments Between Bank Accounts” (25 September 2023).

¹⁴⁸ ASB Bank Limited “ASB Submission on Retail Payments Between Bank Accounts” (28 Sep 2023).

¹⁴⁹ EasyCrypto “EasyCrypto Submission on Retail Payments Between Bank Accounts”, available at https://comcom.govt.nz/__data/assets/pdf_file/0025/332782/EasyCrypto-Submission-on-Retail-Payment-System-Payments-Between-Bank-Accounts-25-September-2023.pdf