

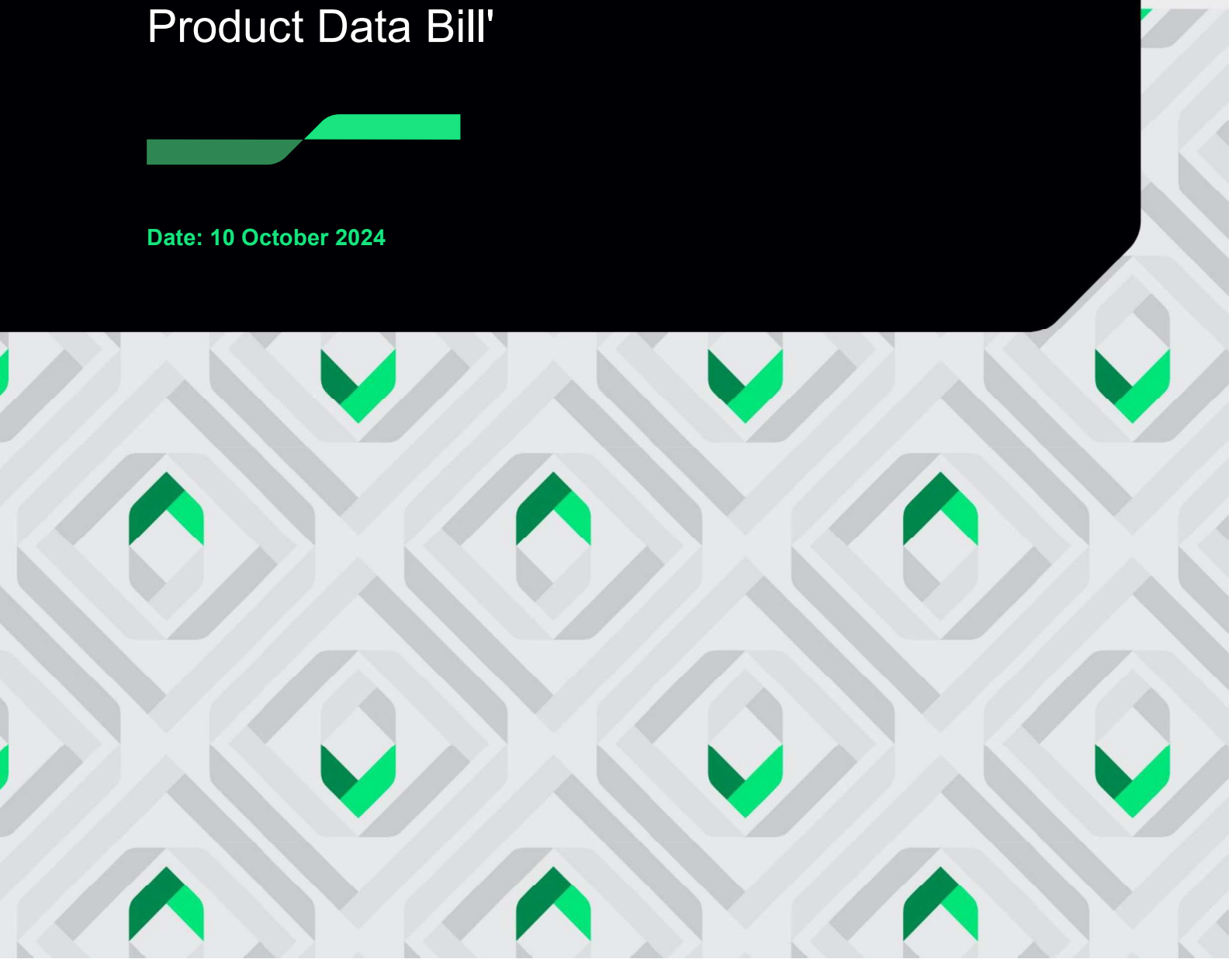


Submission to the Ministry of Business, Innovation & Employment on:

'Discussion paper - Open banking regulations
and standards under the Customer and
Product Data Bill'



Date: 10 October 2024



Kiwibank submission to the Ministry of Business, Innovation & Employment on its Discussion Paper regarding open banking regulations and standards under the Customer and Product Data Bill

Introduction

1. Kiwibank welcomes the opportunity to give feedback to the Ministry of Business, Innovation & Employment (**MBIE**) on its discussion paper dated August 2024 (**Discussion Paper**) regarding proposed regulations and standards under the Customer and Product Data Bill (**Bill**) to introduce what is often referred to as a 'consumer data right' (**CDR**) for the banking sector, which is intended to support the implementation of 'open banking' in New Zealand.
2. Kiwibank submitted to the Committee of Economic Development, Science and Innovation on the Bill (in a submission dated 5 September 2024) (**Bill Submission**) and has also contributed to the submission on this Discussion Paper by the New Zealand Banking Association (**NZBA**), which provides feedback on some more specific (and no less important) points such as accreditation criteria and derived data. Conversely, in this submission, we wish to draw MBIE's attention to important overarching considerations which will help ensure that open banking succeeds in New Zealand and doesn't undermine competition in the sector.
3. As highlighted in the NZBA submission, there are a number of complexities associated with implementing a CDR for the banking sector that will require ongoing engagement with industry participants. Kiwibank wishes to reiterate the importance of such engagement, as it will be vital to ensuring that the implementation of the CDR framework is successful. For example, it is essential that industry is consulted on the detail of the regulations to ensure these align with the existing API Centre standards.
4. Please see **Appendix One** of this submission for responses to the mandatory questions in MBIE's template submission form related to release of information.

Executive summary

5. Kiwibank recognises that providing customers greater access to their banking data through a CDR can contribute to the successful implementation of open banking in New Zealand. Implemented correctly, the CDR is expected to create opportunities for new products and services that benefit consumers and thereby enhance competition and innovation at the same time.
6. However, an open banking regime should not be developed at any cost. Although the speed of implementation is important, it must be balanced with the need to ensure that providers are building services that large numbers of consumers will use frequently, and that are safe and secure. We know from overseas experience that unsubstantiated consumer service propositions, an absence of a robust cost/benefit governance framework, and excessive complexity and prescriptiveness in compliance obligations will compromise the success of our own CDR regime. This would have a direct adverse impact on customer uptake.
7. Investment in open banking infrastructure must therefore have a clear business case. We believe a staged implementation approach is necessary to balance the benefits delivered by new API enabled services against the risks to system stability and customer data security. The staging of the development and implementation of different services is therefore crucial and should be guided by the level of customer demand for different types of open banking functionality. The API Centre has already carried out a significant

amount of work triaging the various services, and accordingly, its Minimum Open Banking Implementation Plan (**API Centre Plan**) is tailored to the New Zealand market and reflects a broad industry consensus on the most effective approach to the roll out of open banking.

8. Kiwibank therefore supports the API Centre Plan and endorses MBIE's sensible view that the designation of the banking sector should indeed be staggered and align with these milestones. Specifically, this includes maintaining Kiwibank's existing implementation timeframe under the API Centre Plan. Staged implementation is a proportionate approach to the complexity of CDR regulation and aligns with other jurisdictions like the UK and Australia. It will also allow Kiwibank to implement open banking at the appropriate point during its ongoing digital transformation.
9. We also agree that payments initiation should be progressed as the first service, with payments services performing a critical function for businesses and consumers and the wider New Zealand economy, and likely to have a high uptake by consumers. The designation should extend to account information, but not beyond what is currently provided for in the API Centre Plan. The designation of any service beyond payments initiation and account information as provided for in the API Centre Plan (including other types of customer data or product data) should only proceed once:
 - (a) these initial services have matured and it is clear that the benefits expected to be achieved have been captured; and
 - (b) there is sufficient evidence of customer demand for the new service proposed for designation to justify investment in building the required infrastructure.
10. Fit for purpose regulatory design is also critical to the success of open banking. Kiwibank advocates a market-driven approach. There have already been comprehensive standards developed by Payments NZ's API Centre, with input from the banking industry, third parties, fintechs and consumers. Considerable work has been done to ensure these standards reflect market demand, opportunity and feasibility of implementation. To the extent that a regulatory framework for open banking is seen as necessary, this framework should facilitate this market-driven approach and be consistent with the API Centre standards.
11. There should not be designation of banking/payments under both the Retail Payment System Act 2022 (**RPS Act**) and the Bill. Kiwibank is concerned that the Commerce Commission's (**Commission**) proposed designation of the interbank payment network under the RPS Act may (if approved by the Minister) introduce an overly complex regulatory framework that is administered by multiple regulators with overlapping policy objectives. Importantly, this not only compromises the success of New Zealand's open banking regime but risks serious unintended consequences in the form of increased compliance burdens imposed on smaller banks which will impact their ability to compete with the larger banks (the exact opposite outcome to the one the regime is designed to achieve). This is not hypothetical as we have seen these undesirable outcomes arise in the Australian context. Kiwibank therefore advocates MBIE taking the leading role in overseeing and supporting the market driven approach to delivering open banking in New Zealand so that the industry has regulatory certainty during the critical delivery period.

Kiwibank's implementation timeframe

12. Kiwibank strongly supports MBIE's proposal to maintain the implementation timeframe under the API Centre Plan, with the domestic systemically important banks (**D-SIBs**) due to deliver agreed APIs in 2024, and Kiwibank to follow in 2026.
13. Regulatory change has a disproportionate impact on smaller banks, like Kiwibank, and constrains their ability to compete. Adopting a staged implementation, as MBIE has proposed, recognises the different sizes of industry participants and the fact that smaller banks, like Kiwibank, do not have the resources to build and deliver open APIs within the same timeframes as the D-SIBs. It is a proportionate approach that reflects the position adopted in other jurisdictions like the UK and Australia.
14. Additionally, Kiwibank is part way through a significant multi-year transformation to upgrade its core banking system (**Transformation**). These changes will enable Kiwibank to be more agile, innovative, and responsive to customer demand. Ultimately, they will help Kiwibank to compete with the D-SIBs, foster innovation and achieve its purpose of Kiwi Making Kiwi Better Off.
15. Kiwibank's Transformation includes the modernisation of key platforms and technology infrastructure which underpin Kiwibank's ability to expose data to third parties in a safe, resilient and reliable way. Kiwibank is currently unable to do this using its existing technology stack. Accordingly, Kiwibank is planning to deliver open banking as part of the Transformation.
16. If Kiwibank is required to deliver open banking earlier than planned, this would mean delaying the Transformation and the overall benefits that it will provide to Kiwibank customers, as well as to all consumers in Aotearoa through a more competitive banking industry. Additionally, Kiwibank would need to deliver open banking using its existing core systems. To do this, it would need to use sub-optimal tactical solutions which come with significant limitations, including concerns regarding security and user experience (for both customers and third parties).

Kiwibank supports MBIE's proposal to align with the work of the API Centre

17. Kiwibank supports MBIE's proposal that the designation of the banking sector should be aligned with the API Centre Plan and provide the blueprint for any regulations and standards. In particular, it is appropriate that:
 - (a) as noted above, the designation of Kiwibank as a data holder does not occur until 1 June 2026 in respect of payments, and 1 December 2026 in respect of customer data;
 - (b) the scope of the designation is limited to payments initiation and account information as provided for in the API Centre Plan in the first instance. All other services, including product data and account opening/closing, should be deprioritised until there is clear demand for services requiring that data (as discussed further below).
18. There has been broad industry consultation undertaken by the API Centre to ensure that the timing of delivery and the scope of data to be made available to accredited third parties is appropriate in the New Zealand context. We note that although MBIE proposes that the open banking designation will cover the same basic categories of customer data as the API Centre Standards, the proposed designation of customer data in paragraph 56 of the Discussion Paper goes much further than the mandatory account information

categories set out in the API Centre Plan. Broadening the scope of customer data in this way would put meeting API Centre Plan implementation timelines at risk.

19. If not implemented on an iterative basis and with an appropriate timeline, Kiwibank would be concerned that this would have a detrimental impact on its ability to innovate and compete effectively in the banking market. This could risk undermining the purpose of the CDR regime, which is to ‘promote competition and innovation for the long-term benefit of customers.’
20. As discussed further below, the API Centre Plan appropriately balances the prioritisation of resources to services that offer demonstrable value to customers, while also reducing the risks to customer security and trust that may arise where open banking infrastructure is developed too quickly.

A customer-centric approach should remain the key guiding principle

21. Kiwibank supports MBIE's proposed criteria against which designation options should be assessed, which includes considering whether it would provide for wide uptake, valuable services, and the promotion of customer trust and confidence.¹
22. The establishment of a CDR for the banking sector is intended to benefit customers through new products and solutions, as well as greater competition and innovation. However, the realisation of these benefits will depend on the extent to which customers are willing to engage with the new technologies that underpin open banking. In particular, customers need to have confidence that:
 - (a) using open banking solutions will offer them value, particularly compared to traditional banking services; and
 - (b) open banking services are safe and will be subject to the same level of security as customers would expect to receive from their bank.
23. To achieve these outcomes in the context of introducing a new API enabled service, a detailed cost-benefit analysis must be carried out to determine whether that service would result in overall benefits to consumers. For example, it should be clear that:
 - (a) There is a sufficient level of customer demand for the functionality that the service will deliver. This will help to ensure that the implementation plan for open banking continues to be aligned with the services that customers desire and are likely to use and benefit from.
 - (b) The proposed timeline for building the infrastructure would enable banks to meet minimum security standards. While accelerating the introduction of new services may deliver these services more quickly, the assessment should take into account the potential costs associated with any increased risks to data security and customer trust.
24. Overseas experience demonstrates that uptake will be impacted if open banking is developed too quickly and, as a consequence, customers do not have the evidence to trust that the services are not only delivering value but are also safe.
25. For example, while Australia has progressed implementation of open banking faster than New Zealand, its experience demonstrates that it takes time for consumers to build

¹ Discussion Paper at [35].

understanding and trust in open banking. A strategic review of the CDR implementation in Australia was commissioned by the Australian Banking Association (**ABA**) and was released in July 2024 ("**ABA Strategic Review**"). The final report found that, when measuring the CDR regime against the guiding principles for CDR's implementation – customer focus, promote competition, encourages innovation and efficient and fair – "the CDR has fallen short of expectations".² In particular:

- (a) The adoption rate of CDR was only 0.31% at the end of 2023, almost three years after the regime was first introduced. As acknowledged in the Discussion Paper, most commentators consider uptake to have been disappointing, and far below the levels seen in the UK.³
- (b) A key reason for the slow uptake has been attributed to the fact that the case for CDR has not been clearly made to consumers. Limited compelling use cases, limited public awareness of CDR and limited underlying trust in sharing data, especially given the current prevalence of data breaches and scams, are all key reasons for slow uptake.⁴
- (c) The slow uptake has made the cost of CDR "economically unsustainable". Furthermore, there has been a disproportionate compliance and infrastructure investment cost impact on mid-tier banks, with the accrued CDR cost per accrued customer in 2023 *over double* of that of the major banks.⁵
- (d) These onerous and costly compliance burdens, combined with more limited resources than the larger banks to navigate complex systems changes, has also had the unintended consequence of inhibiting competition, because smaller banks have had limited capacity left to invest in innovation and new products.⁶

26. The CDR rollout in Australia required substantial investment from both government and industry participants and continues to incur significant ongoing costs. The banking industry alone is estimated to have spent ~\$1.5b since 2018. It is therefore critical that we do not ignore the lessons learned in other jurisdictions, and that we avoid a scenario whereby the CDR becomes New Zealand's next "white elephant", because the costs of implementation do not deliver material value or benefits to consumers. Kiwibank recognises that MBIE appears to have learned from the Australian experience, hence its sensible proposal to adopt a staggered approach to both data holders and data categories, and to adopt a market-driven approach.

27. Kiwibank acknowledges that certain jurisdictions have delivered a successful open banking regime, and lessons should be learned from these success stories, too. However, as the ABA Strategic Review cautions, there is not a "one size fits all" model, and additional factors external to the policy environment may contribute to or hinder overall success. For example, the jurisdictions often held out as having successful data sharing regimes, such as Brazil, India and Singapore, "typically exhibit enabling infrastructure and clear consumer propositions".⁷ We note that these regimes are often

² Accenture Report (Australian Banking Association), Consumer Data Right Strategic Review (July 2024) at page 32. Designation Discussion Paper at slide 3.

³ Discussion Paper at [33].

⁴ Accenture Report at slide 25.

⁵ Accenture Report at slide 20.

⁶ Accenture Report at slide 25.

⁷ Accenture Report at slide 3.

fulfilling a need in that jurisdiction, for example real time payments, that is not absent in New Zealand. That is to say that the scope and timeline for New Zealand's adoption of open banking must be set based on what is achievable and most efficient within the context of the New Zealand economy. And above all, the resounding message is that we must "look at CDR from a consumer perspective – not from an industry perspective",⁸ such that the consumer is at the core of any decision to move forward and to invest.

28. Accordingly, Kiwibank reiterates that MBIE's criteria for assessing its designation decision is sound. As noted above, Kiwibank maintains that the appropriate vehicle for generating the evidence necessary to support MBIE's role in making designation decisions remains the API Centre in collaboration with key stakeholders, such as consumers.

The CDR is the appropriate regulatory framework for delivering open banking

29. Kiwibank supports an industry-wide approach to the development of open banking, supported by a single, cohesive open banking framework which is governed by the Bill and overseen by MBIE.

30. However, as part of the Commerce Commission's recent recommendation to the Minister of Commerce and Consumer Affairs to designate the interbank payment network under the RPS Act,⁹ the Commission will (if the recommendation is approved) be able to use various powers and functions in relation to the adoption and delivery of open banking in New Zealand. As noted in the Discussion Paper, if the Minister agrees to the designation, the Commission would have "broad discretion" as to how it intervenes.¹⁰

31. Regulatory uncertainty and the prospect of duplicative and significant compliance costs as a result of intervention by two regulators is highly counterproductive to delivering a complex open banking system within the timeframes established by the API Centre Plan. Kiwibank is concerned that having two regulators will contribute to the implementation of compliance requirements that are confusing and fragmented, with the resulting costs of compliance across the industry to be borne disproportionately by smaller banks.

32. Again, this concern is not hypothetical. The Australian Government's Statutory Review of Australia's CDR regime in 2022 emphasised that care should be taken to avoid duplicative or disconnected obligations arising between the CDR regime and other initiatives in areas such as payments in order to reduce unnecessary confusion and compliance burdens.¹¹ Participants in Australia's initial CDR roll out reported experiencing issues in determining which body or organisation was the responsible decision maker and experiencing general administrative confusion, creating additional burdens and stress on participants that could have been avoided.

33. Kiwibank understands that the Commission and MBIE anticipate that they will enter into a Memorandum of Understanding to agree on their respective roles to avoid overlap (with MBIE to focus on the wider roll out of the CDR regime).¹² This division of work and responsibility needs to be clarified sooner rather than later. In our view:

⁸ Accenture Report at slide 25.

⁹ Commerce Commission, *Retail Payment System Recommendation to the Minister to designate the interbank payment network* (August 2024).

¹⁰ Discussion Paper at [127].

¹¹ Australian Government, *Statutory Review of the Consumer Data Right – Report* (2022) at page 9.

¹² Commerce Commission, *Retail Payment System – Our reasons to support our recommendation to the Minister to designate the interbank payment network* (August 2024) at [3.32].

- (a) MBIE needs to have a clear mandate to work collaboratively with industry and consumer representatives to support the development of a successful open banking regime in accordance with the API Centre Plan, without threat of the Commission intervening during this crucial set up period; and
- (b) The designation of the payments network under the RPS Act should not be implemented unless the CDR framework is established and regulatory gaps in respect of payments are clearly identified. We do not believe that designation is currently justified, as regulatory intervention by the Commission to support the development of an open banking regime would fail the required cost/benefit analysis, including in light of the API Centre's work and the introduction of the Bill and CDR framework.