Responses to questions

The Consumer Policy team welcomes your feedback on as many sections as you wish to respond to, please note you do not need to answer every question.

General Comments:

Mastercard welcomes the opportunity to provide input into the development of regulations and standards to implement open banking in New Zealand. Our comments in this response are drawn from our experience in other jurisdictions including the United States, United Kingdom, European Union and in particular, Australia.

We offer the following comments on key themes raised by the Discussion Paper:

1. **Status quo and problem definition**

Mastercard acknowledges the progress on open banking that has already been made by industry in New Zealand, led by the API Centre. The Minimum Open Banking Implementation Plan represents a clear commitment by the largest banks in New Zealand to secure, API-based data sharing. Ultimately however, we think regulation is required to support the development of a sustainable ecosystem and ensure maximum consumer uptake. We therefore support the passage of the Consumer and Product Data Bill and the subsequent designation of the banking sector.

2. **Scope of an Open Banking designation**

Mastercard broadly agrees with the proposal for the banking designation to, at least in its initial phase, extend to the same persons as covered by the API Centre Minimum Implementation Plan, and the same categories of customer data and action types. Leveraging the existing industry framework is the most logical starting point for the regulatory framework in New Zealand and represents the best path towards achieving the desired go-live target date of December 2025.

Scope of designated persons

As the Discussion Paper acknowledges however, several high-value use cases will not be able to be fully supported unless and until all banks/deposit takers are brought into scope. While acknowledging the compliance costs associated with designation that may disproportionately impact smaller institutions, we think the ability of **all** consumers to access lending, personal financial management and payments use cases is critical to the overall success of the ecosystem in New Zealand. We therefore encourage MBIE to consider setting out a clear timetable for the future designation of all banks and deposit-takers, in the same way that the Australian CDR rollout specified a phased approach starting with the largest four banks and then progressing to all other Authorised Deposit-taking Institutions. This would give certainty to all ecosystem participants, whilst affording smaller institutions adequate time to prepare for go-live.

Scope of designated data

We agree with the proposal for designated account types and data points to initially align with the API Centre standards. We do not consider that the inclusion of product data is necessary to support the initial high-value use cases of lending, PFM and payments, and note that inclusion of product reference data has been a driver of significant compliance costs for banks under the Australian CDR regime.

3. **Accreditation criteria**

Mastercard broadly agrees with the proposals on accreditation criteria set out in the Discussion Paper, but offers the following specific comments:

Fit and proper person tests

We acknowledge that fitness and propriety requirements are a common features of regulatory licensing regimes, including the Australian CDR framework. However, our experience has been that these requirements can serve as a practical barrier for large multinational companies to enter a particular market, particularly where the obligation is drafted in a way that captures all directors or managers of a particular corporate group (e.g. through reference to affiliate or associate entities of the applicant entity). In many cases, this can involve procuring fit and proper declarations from hundreds of unique individuals and entities spread across the globe – a significant undertaking that adds time, cost and complexity to the accreditation process. We would urge MBIE to ensure that the fit and proper requirements apply only to those directors and senior managers who are (or will be) directly involved with the applicant entity's New Zealand open banking business activities.

Information security

One of the biggest barriers to uptake of the CDR in Australia has been the adoption of CDR-specific privacy safeguards, which impose restrictions on the way CDR data can be used and disclosed, and require participants to comply with a set of specific information security requirements and minimum controls. These provisions exceed what is required under the ordinary privacy law in Australia, and their effect has been to serve a major disincentive from participation in the CDR – because market participants have instead preferred to continue accessing the same banking data via alternative means (e.g. screen scraping) without then having to comply with the additional CDR-specific requirements.

While it is obviously important to ensure that prospective participants in an open banking regime are able to demonstrate that they will collect, hold and use data safely and securely, the experience in Australia has shown the importance of not holding participants in an open banking framework to a higher standard than that which prevails under the general privacy law. Accordingly, we would urge MBIE to adopt Option 1 as it is described in the Discussion Paper, being a criterion that the applicant meets information privacy principle 5.

4. Fees

The key objective with respect to any provisions on fees should be to ensure that all participants can derive value from the open banking ecosystem. It must be set up for long-term, sustainable success. The initial approach on fees, particularly for access to customer data, should be established with a view to incentivising accredited requestors to bring use cases to market, and crucially, to transition away from screen scraping. However, this approach should be revisited over time to ensure ongoing sustainability of key uses cases. The commercial arrangements which underpin open-banking powered account-to-account payments for example must be designed and applied in a way that reflects the value that is being created and distributed across consumers, merchants and service providers. There needs to be a business case for innovation to thrive.

Mastercard also believes there is an important linkage between the pricing of open banking-powered payments and the regulatory settings that affect pricing of card payments (e.g. interchange regulation). There is a risk that the proposed changes to interchange rates will have the unintended consequence of stifling the ability of open banking-powered payments to compete – and to that end we would urge the MBIE to work closely with the Commerce Commission on the issue of pricing, to ensure there is a balance of incentives across the payments ecosystem.

5. The detailed rules for Open Banking

As a general comment, Mastercard would advocate in favour of a principles-based approach to rule-making. The Australian CDR Rules by contrast take a very prescriptive approach to matters such as consent requirements, which has contributed to cumbersome UX flows leading to low

consumer uptake and poor conversion rates. Where prescription is required, details should be set out in the Standards rather than in the Regulations – as Standards can typically be adjusted more readily, and applied more flexibly, to suit the differing needs of industry participants.

We also reiterate our comments above around ensuring that there are no incremental requirements or obligations that apply to data obtained or actions taken via open banking, that extend beyond what would apply in a non-open banking scenario. For example, the Australian CDR Rules require that an explicit de-identification consent must be obtained before data collected via open banking can be de-identified and used for general research. In contrast, the privacy law would generally permit de-identification of the exact same data *without* an explicit de-identification consent, if it is obtained outside of open banking (e.g. via screen-scraping). This example demonstrates the unequal playing field that exists under the Australian regime between treatment of CDR data vs non-CDR-data – and this is the biggest single barrier to participation in the Australian CDR ecosystem. The goal of the MBIE must be to align the Regulations with the requirements of the Privacy Act as closely as possible.

Payment limits
On payment limits specifically (question 38), Mastercard's view is that banks must be required to apply the same limits to payments initiated by an accredited requestor via the relevant channel (e.g. internet banking, mobile app etc) as the limits that would apply to payments initiated directly by the user via the same channel. This is the position that prevails under PSD2 in Europe, and ensures an equal playing field for open banking payments.

6. Implementation, monitoring and review

As stated above, Mastercard agrees with the proposal to leverage the existing industry framework and the work done by the API Centre to date – this is a pragmatic approach that will help to ensure that the ambitious December 2025 go-live date can be met.

Over the longer term however, we consider that changes to the governance and operations of the API Centre should be considered, in order to give mitigate any current or future concerns around its independence from Payments NZ and ultimately, ensure sustainability in the ecosystem. Funding independence, in particular, will be key to meeting this objective.

Thank you

We appreciate you sharing your thoughts with us. Please find all instructions for how to return this form to us on the first page.