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Introduction

1. Paymark Limited (**Paymark**) welcomes the opportunity to submit on the exposure draft of the Financial Market Infrastructures Bill (**FMI Bill**).

2. Paymark appreciates the time given by representatives of the Reserve Bank of New Zealand (the **Reserve Bank**) to meet with Paymark and, its ultimate holding company, Ingenico Group S.A. (**Ingenico Group**), on 9 September 2019. This meeting assisted us to narrow the range of our comments and to focus on the areas which we think may have the biggest impact on Paymark.

3. This submission focuses on the details of the FMI Bill as they apply to Paymark. In particular, the:
   (i) overriding objective and purpose of the legislation;
   (ii) criteria for assessing entities for designation and/or systemic importance;
   (iii) definitions; and
   (iv) lack of clarity around what a payment system and/or a critical service provider is.

4. We understand that the Reserve Bank may choose to assess Paymark in some capacity or another. Before doing so, it would be useful to understand what problem the Reserve Bank seeks to solve by way of this legislation, especially in respect of retail payments systems.

5. Paymark has made two submissions previously on this topic:
   (i) in 2013 on the draft policy entitled "Strengthening Statutory Payment Oversight Powers"; and
   (ii) in response to the revisions made to the "Designation and Oversight of Designated Settlement Systems" in 2014.

6. Paymark largely endorses the submissions made by Payments New Zealand on the current and previous consultation papers, so far as they relate to Paymark, and to the systems, rules and the entities with which Paymark engages.

Lack of problem definition leads to increased moral hazard

7. The biggest issue with the FMI Bill is the complete lack of a problem definition. Without a clear problem to solve, the risks associated with getting it wrong increase. If a problem statement is clear, the risk of moral hazard is minimised.

8. Further, the FMI Bill does not indicate the kinds of precautions that are commonly included in sophisticated regulatory design. Any impediments to regulatory supervision should be clearly communicated. The Reserve Bank should be stating the limits of expectations when it comes to the supervision of FMIs and/or retail payments systems.

International expectations

9. Paymark understands the Reserve Bank's desire for stronger oversight and crisis management powers which are aligned with the CPSS-IOSCO Principles for Financial Markets Infrastructures (**PFMIs**). However, as drafted the FMI Bill endeavours to capture the entire FMI and retail payments infrastructure in New Zealand under the same regime. Not only that, FMIs and systemically important FMIs seem to be subject to almost the same stringent requirements. This does not make sense when the main benefit of designation is simply to obtain settlement finality. A one-size-fits all approach may lead to some entities being disproportionally disadvantaged. The assessment of entities should be risk based, not simply on size or function.

Paymark system

10. Many of the matters in the FMI Bill are neither relevant nor applicable to the electronic messaging system operated by Paymark (the **Paymark System**). If Paymark were to be designated it would likely incur significant compliance costs, yet it would not directly benefit from the statutory guarantee for finality of settlement and netting. Further, there is no practical benefit to society or the payments environment of Paymark being designated over and above Paymark's current obligation to supply the Reserve Bank with information.

11. As drafted, the FMI Bill does not provide any additional protection for consumers and/or merchants, and it does not assist in the wider issues the government is trying to solve with respect to the inefficiencies identified by MBIE related to interchange fees[1].

12. In fact, further regulatory burden on payment networks such as the Paymark System could result in increased fees at the point-of-sale to recover the costs associated with regulatory compliance with no apparent increase in protection or benefit for consumers.

13. Responding to new regulatory requirements is likely to result in a redirection of resources away from developing new products and services. This change in focus would limit Paymark's ability to respond quickly to changing market dynamics and lead to barriers to innovation.

14. The Government has indicated that it wishes to foster innovation in payments,[2] not hinder it. Paymark would much rather prioritise spending its time and resources innovating to develop better products and services for consumers and merchants rather than on compliance, reporting and monitoring when no benefit to the retail payments ecosystem has been identified through the FMI Bill.

Timing

15. The Reserve Bank of New Zealand Act 1989 (the **RBNZ Act**) is currently under review. The objective and purpose of the RBNZ Act are substantially the same as set out in the FMI Bill. However, during the review process of the RBNZ Act it appears that the overarching objective may change. Moreover, it is likely that several of the policy decisions that will be made as part

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[1] Ministry of Business, Innovation and Employment, Issues Paper on Retail Payments Systems in New Zealand – October 2016

[2] https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/supporting-competition-and-innovation-in-retail-payment-systems/speech-to-payments-nz-the-hub/

of that review, will have a direct impact on the FMI Bill. Paymark therefore proposes that it may make sense to align the timing of the FMI Bill with the completion of the Phase Two review of the RBNZ Act.

Practical constraints

16. Paymark wishes to help ensure that the new regime maximises the benefits and minimises the risks, such as unintended consequences, of such a regime. The payments industry is evolving so quickly that focus from the Reserve Bank may be better placed on integrity, rather than technical, matters.

Current situation

17. In January 2019, Ingenico Group purchased Paymark Limited. Ingenico Group understands the importance of Paymark's electronic payments messaging system and its infrastructure. Ingenico does not intend to make any significant changes to Paymark's operations and intends to invest in both the existing processing infrastructure and as well as Paymark's innovative new payments platform that utilises API connections called OPEN.

18. Ingenico Group is incentivised to ensure that the Paymark System remains safe, reliable, stable and secure. Ingenico Group acknowledges that if Paymark's electronic payments messaging system fails or if Paymark is not able to process transactions, there would be disruption to consumers and businesses as well as material loss of revenue for Ingenico Group.

[redacted] [redacted]

[redacted] [redacted]

21. The most likely causes of failure in dispersed consumer transaction facilities would include telecommunications failures, power outages, or breakdowns in internet security, none of which are likely to be under the Reserve Bank's supervision or mitigated by any such oversight.

22. Technology and practices are evolving so fast that New Zealand participants are dependent on the insight, planning and expertise of just a few experts, all of whom are necessarily engaged by parties already subject to oversight and regulation. It is therefore unlikely that the Reserve Bank would have the capability, readily available, to step-in to manage and run a switch like the Paymark System.

23. The Paymark System is subject to general oversight by the Reserve Bank whereby the Reserve Bank has the power to require operators and participants to supply information. Paymark is also indirectly regulated through its contracts with the banks as these contracts include the obligation on Paymark to provide services should the bank fail and:
    a. be put into statutory management[3]; or
    b. suffer significant disruption[4].

24. It is unlikely that the step-in rights arising from Paymark's designation as an FMI would provide any more security to the payments environment than that which is already in place.

25. The technology that runs the Paymark System is understood by few technology specialists; those people are costly to obtain and globally there are insufficient numbers. Paymark suggests that the Reserve Bank could find it challenging to employ the necessary resources, and practicable capacities, to run the Paymark System effectively. Further, in the case of a crisis, there is unlikely to be any world expert readily available to the Reserve Bank. Furthermore, the disruption and uncertainty caused by the Reserve Bank exercising step-in rights would mean the Reserve Bank could not necessarily rely on continued support from Paymark's in-house experts. Any regulatory proposition should be carefully specified to avoid promising more than it can deliver, while ensuring that it does deliver what it promises.

26. To provide insights on what might be genuinely useful to consumers and merchants when it comes to retail payments perhaps it would be beneficial if the Reserve Bank were to facilitate an industry wide consultation on the problem definition with an intention to define how the industry and government can best work together, rather than through top down regulation.

27. Paymark would welcome the opportunity to work with the Reserve Bank to provide the level of assurance it needs through collaborative and cooperative processes.

Level playing field

28. Other jurisdictions do not appear to have regulated retail payments systems in this way. Indeed, the large, global, international payment schemes, such as Visa and Mastercard have not been designated as PFMIs in other jurisdictions nor have they been identified as potential FMIs in the 2017 Cabinet Paper entitled "An Enhanced Oversight Framework for Financial Market Infrastructures".

29. If bilateral retail payment systems, such as Paymark, are in scope, then RBNZ must be consistent in its application of the assessment criteria to ensure the playing field is level.

30. Paymark's provision of low-cost eftpos transaction processing services for merchants competitively constrains the costs and use of the products and services offered by the international card schemes. The Reserve Bank could become a target of attempts by other

[3] In response to the Reserve Bank's "Open Banking Resolution".
[4] In compliance with the Reserve Bank's outsourcing policy "BS11".

industry players to stall Paymark's payment innovation by way of increased regulatory requirements. It could be detrimental to consumers and merchants if other retail payments players deliberately diverted the focus of the Reserve Bank from themselves and on to Paymark.

31. If Paymark is to be assessed, then it so follows that other New Zealand retail payment systems (such as Verifone and Windcave) and the international card payment schemes (Visa, MCI, Amex and UPI) that operate in New Zealand, would also be assessed.

Definitions

FMI

32. The definition of FMI in the FMI Bill refers to "*multilateral system for the clearing, settling, or recording …*". Paymark's System is a bilateral system that records the authorisation of payment transactions, but not the payments themselves. The entities using the Paymark System have individual service contracts with Paymark. They are not "participants". The Paymark System prepares the files that are used for settlement but does not itself perform clearing or settling functions.

33. Paymark endorses the proposal set out in Payments New Zealand's submission to split the definition of FMI into two parts:
    (i) clearing and settlement facilities; and
    (ii) payment system that performs interbank funds transfer.

Payment System

34. There is no definition of 'payment system' in the FMI Bill. Paymark proposes that the Reserve Bank look to other jurisdictions and focus on including only those systems that perform interbank clearing and settlement facilities and/or that involve the transfer of funds. The risks and issues associated with funds transfer and settlement are likely to be far greater than those that arise from the processing of authorisation messages and preparation of files.

Systemic Importance

35. The Reserve Bank has indicated that a framework would be published but was unable to confirm when the framework would be published. It is unclear whether it would be in advance of the FMI Bill being presented to Parliament or after.

36. Paymark notes that the classification and guidelines around what a systemically important FMI is, as opposed to a designated FMI, are vague and open to any system effectively being defined. Paymark feels that this lack of clarity provides the Reserve Bank with the ability to designate almost any system which creates uncertainty in the market. Previously designation appeared limited to settlement systems but more recently the net has been cast wider.

37. Paymark proposes that any framework take more account of factors that indicate risk, rather than simply on the basis of function and/or size.

Critical Service Provider

38. Paymark understands that it may be assessed as being itself an FMI or, in the alternative, a critical service provider. However, the FMI Bill does not set out the criteria for defining the "essential services needed to clear, settle, and report electronic payments". It would be

useful, for entities such as Paymark, to understand the criteria so that it can have more clarity around the Reserve Bank's intentions and the risks it seeks to mitigate.

39. The lack of clarity on the distinction between those entities that may be deemed critical and those that are not may, therefore, have an unintended impact on those entities and still not achieve the oversight objectives of the FMI Bill.

40. Supervision should be reduced where it is superfluous or provides unfounded assurance.

Paymark thanks you for the opportunity to submit on the FMI Bill.