

**From:** Andrew Simmonds, POLi Payments

**Sent:** Friday, 29 August 2025 9:07 am

Kia ora,

Thank you for providing Merco Limited (trading as POLi Payments) the opportunity to comment on the draft regulations.

We have a heavy workload at present and as a consequence these submissions are necessarily brief. We would however, be happy to discuss these points with your team if that would be helpful.

We note that the Regulations appear to be drafted on assumption that bank customers wishing to make payments to the merchants/billers of payment services intermediaries will also be customers of the payment services intermediaries, and that payment services intermediaries will require those customers to register with the intermediary. Although this may be the case in some scenarios (e.g. for a peer to peer payment service), in the vast majority of use cases under the payments standards this will not be the case. Further, the regulations don't seem to have taken account of the allowance in the standards and API Centre Terms and Conditions for intermediaries to provide payment services via a "Permitted User".

In the permitted user scenario, the intermediary is essentially a technology provider who is required to ensure the Permitted User complies with the consent, security and other requirements of the standards and T&C's. This type of "distribution" arrangement is a necessary feature of payments services (where end service providers like Xero and Stripe for example distribute the payment services of various intermediaries). This benefits both merchants and consumers.

It is essential for successful uptake of open banking that the regulations allow payment services intermediaries to operate in a manner consistent with market standard commercial structures. In this regard, we note that the API Centre's rules are already less flexible than in some areas than market practices internationally, which attracts negative comment from POLi's international partners.

### **General Requirements Regulations**

- Reg 9(1)(e) – we are unsure of the policy reason for requiring accredited requestors to notify MBIE of major transactions, but it seems overreaching. Many accredited requestors will be small fintechs, and routine matters such as capital raising and entry into commercial agreements could trigger this obligation. If the concern is to ensure MBIE is aware of any change of control/sale of business events, it would be better to limit the notification obligation to this specific scenario.

- Reg 10 – we would like to see this regulation clarified so that it is clear that an accredited requestor can require the fourth party beneficiary of the payment consent (the merchant or biller) to make this notification to customers. Otherwise, this regulation would make the enduring consent features of the open banking standard impractical for payment services intermediaries like POLi. To clarify, POLi does not require consumers wishing to pay POLi merchants to sign up for accounts with POLi. POLi does not collect email or phone numbers of consumers, and this lack of friction is a significant behind the success of payment services like POLi. Consumers will always have two places they can go for information about their consent status – the merchant/biller and their bank’s internet banking/mobile banking applications. It is unnecessary to require a intermediaries to have a direct relationship with customers (and if the regulations require this, the uptake of open banking will be significantly hindered).
- Reg 13 – it is impractical to try to map insurance cover to potential liability. Insurance is a risk management tool and cannot be expected to provide a complete indemnity against all loss. The focus should rather be on ensuring that third parties carry a prudent level of insurance cover.
- Reg 14(b)(iv) – it would be more realistic to require intermediaries to have adequate processes to “mitigate” the risk of a deceptive request being made.

### **Banking and other Deposit-Taking Regulations**

- Reg 9(2)(b) and (c) – reference to a contract for goods and services is too narrow. Open banking is and will be used for other types of payments such as transfer of investment funds to Financial Services Providers, payments to digital wallets, donations to charities, club memberships, loan repayments. These types of payment are different to goods or services, and reference to a “contract” is an uncomfortable fit for some of them (even though there will be at least some terms and conditions or contractual arrangements relating to the payment).

For reference, POLi is developing new Merchant terms and conditions for open banking, and we attach our latest draft of this document for your information. You will see in clause 3.4 how we have sought to address this definitional issue. Note that these T&C’s aren’t intended to apply to a Permitted User scenario, and that we have not yet developed the specific terms that would apply to the recurring payment services (these will be set out in a specific merchant services schedule for that service).

Thank you for your consideration of these comments.

Andrew Simmonds  
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